United States Court of Appeals

for the Second Circuit

APPENDIX

In the 75-7694

UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

Docket Nos. 75-7694
76-3003

B

TRUCK DRIVERS LOCAL UNION NO. 807,
INTERNATIONAL BROTHERHOOD OF TEAMSTERS,

Plaintiff-Appellant,

v.

THE BOHACK CORPORATION,

Defendant-Appellee.

TRUCK DRIVERS LOCAL UNION NO. 807,
INTERNATIONAL BROTHERHOOD OF TEAMSTERS,

Petitioner,

v.

HONORABLE JACOB MISHLER, CHIEF JUDGE
UNITED STATES DISTRICT COURT EASTERN
DISTRICT OF NEW YORK,

Respondent.

JOINT APPENDIX

J. WARREN MANGAN, ESQ.
Attorney for Plaintiff-Appellant
& Petitioner
32-43 49th Street
Long Island City, New York 11103
(212) 726-6009

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PAGINATION AS IN ORIGINAL COPY

I N D E X

THIS FORM MUST BE USED IN FILING ALL GRIEVANCES

New York City Joint Area Local Committee

EXHIBIT "A"

DATE RECEIVED .....

CASE NO. .....
FOR COMMITTEES' USE ONLY
DATE CASE HEARD .....

PRE-HEARING INFORMATION

In order that the Committee Members may be familiar with the important features in this case, will you kindly fill out the following form as completely as possible. The information submitted herein will be treated as a preliminary general statement of your position.*

1. Union Name ..... Truck Drivers Local Union No. 807
   Address ..... 32-43 49th Street, Long Island City, New York 11103
2. Name of Agent handling particular grievance ..... John Hohmann
3. A. Name of Employee filing complaint .....
   B. Classification of Work .....
   C. Date of Employment .....
4. Name and Address of Carrier involved ..... The Bohack Corporation
   ..... 48-25 Metropolitan Avenue, Brooklyn, New York 11237
5. Circumstances of the Dispute (Check one) .....
   A. Warning Notice ..... C. Discharge .....
   B. Disciplinary time off ..... D. Back pay claim .....
   E. Others Transferring or assigning of work
6. Date on which company took action against employee ..... December 16, 1974
7. Indicate that part of contract which you claim was violated ..... Article 32, Section 1 and Paragraph 2 of Rider Agreement .....
8. Date on which alleged violation took place ..... December 16, 1974 .....
9. Date on which grievance was first taken up with management ..... December 16, 1974 .....
10. Exact amount of back pay, if any, claimed by aggrieved employee .....
11. Your Position (Also include brief resume of pertinent facts — use back of sheet if necessary)

As of December 16, 1974 The Bohack Corporation is using employees of Daipon Shopwell to deliver dairy and bakery products from a Daipon Shopwell warehouse to Bohack stores with equipment owned by Fleet Services of New York, Inc., a wholly owned subsidiary of The Bohack Corporation .....

.....

.....

.....

John Hohmann
For the Union

DATED: December 16, 1974

1 Copy Joint Area Committee
1 Copy Local Union
1 Copy Employer Involved
1 Copy Employer Association

Exhibt "B"

NATIONAL MASTER FREIGHT AGREEMENT

and

NEW JERSEY—NEW YORK AREA GENERAL TRUCKING SUPPLEMENTAL AGREEMENT

The Bohack Corp.
48-25 Metropolitan Ave.
Brooklyn, N.Y. 11237 G

For the Period
July 1, 1973 to March 31, 1976

INDEX

NATIONAL MASTER FREIGHT AGREEMENT

Covering

OVER - THE - ROAD

and

LOCAL CARTAGE

EMPLOYEES OF PRIVATE

COMMON, CONTRACT AND

LOCAL CARTAGE CARRIERS

For the Period of

JULY 1, 1973

through

MARCH 31, 1976

NATIONAL MASTER FREIGHT AGREEMENT COVERING OVER-THE ROAD AND LOCAL CARTAGE EMPLOYEES OF PRIVATE, COMMON, CONTRACT AND LOCAL CARTAGE CARRIERS

for the period of

July 1, 1973 through March 31, 1976

covering:

operations in, between and over all of the states, territories and possessions of the United States, and operations into and out of all contiguous territory.

The .....
(Company or Association)

hereinafter referred to as the "EMPLOYER,"

and

the TEAMSTERS NATIONAL FREIGHT INDUSTRY NEGOTIATING COMMITTEE of the INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN AND HELPERS OF AMERICA, and Local Union No. ....., which Local Union is an affiliate of the INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN AND HELPERS OF AMERICA, agree to be bound by the terms and conditions of this Agreement.

ARTICLE 1.

Parties to the Agreement

Section 1. Employers Covered

The Employer consists of Associations, members of Associations who have given their authorization to the Associations to represent them in the negotiation and/or execution of this Agreement and Supplemental Agreements, and individual Employers who become signatory to this Agreement and Supplemental Agreements as hereinafter set forth. The signatory Associations enter into this Agreement and Supplemental Agreements as hereinafter set forth. The signatory Associations enter into this Agreement and Supplemental Agreements on behalf of their members under and as limited by their authorizations.

Section 2. Unions Covered

The union consists of any Local Union which may become a party to this Agreement and any Supplemental Agreement as hereinafter set forth. Such Local Unions are hereinafter designated as "Local Union." In addition to such Local Unions, the Teamsters National Freight Industry Negotiating Committee of the International Brotherhood of Teamsters, hereinafter referred to as the "National Union Committee," is also a party to this Agreement and the agreements supplemental hereto.

Section 3. Transfer of Company Title or Interest

This Agreement and the Supplemental Agreements hereto, hereinafter referred to collectively as "Agreement", shall be binding upon the parties hereto, their successors, administrators, executors and assigns. In the event an entire operation, or rights only, are sold, leased, transferred or taken over by sale, transfer, lease, assignment, receivership or

bankruptcy proceedings, such operation or use of such rights shall continue to be subject to the terms and conditions of this Agreement for the life thereof.

On the sale, transfer or lease of an individual run or runs, or rights only, the specific provisions of this Agreement, excluding riders or other conditions, shall prevail. It is understood by this Section that the parties hereto shall not use any leasing device to a third party to evade this Agreement. In the event the Employer fails to require the purchaser, transferee, or lessee to assume the obligations of this Agreement, the Employer (including partners thereof) shall be liable to the Local Union and to the employees covered for all damages sustained as a result of such failure to require assumption of the terms of this Agreement, but shall not be liable after the purchaser, the transferee or lessee has agreed to assume the obligations of this Agreement.

When a signator to this Agreement purchases rights from another signator, the purchaser must accept the affected employees of the seller, in accordance with the provisions of Article 5, Section 3 before hiring any new employees. The applicable lay-off provisions of this Agreement shall apply. When rights are sold to a non-signator to this Agreement, and such purchaser is the sole bidder, the provisions of this Agreement shall not apply. However, in the event of multiple bids, one or more of such bidders being signator to this Agreement, and the seller elects to sell to a non-signator, then all of the provisions of Article 1, Section 3, shall apply.

The Employer shall give notice of the existence of this Agreement to any purchaser, transferee, lessee, assignee, etc., of the operation covered by this Agreement or any part thereof, including rights only. Such notice shall be in writing with a copy to the Local Union, at the time the seller, transferor, or lessor executes a contract or transaction as herein described. The Local Union shall also be advised of the exact nature of the transaction, not including financial details.

ARTICLE 2.

Scope of Agreement

Section 1. Master Agreement

The execution of this Master Agreement on the part of the Employer shall cover all operations of the Employer which are covered by this Agreement, and shall have application to the work performed within the classifications defined and set forth in the Agreements supplemental hereto.

Section 2. Supplements to Master Agreement

(a) There are several segments of the Trucking Industry covered by this Agreement and for this reason Supplemental Agreements are provided for each of the specific types of work performed by the various classifications of employees controlled by this Master Agreement.

All such Supplemental Agreements are subject to and controlled by the terms of this Master Agreement and are sometimes referred to herein as "Supplemental Agreements."

All such Supplemental Agreements are to be clearly limited to the specific classifications of work as enu-

merated or described in each individual Supplement.

(b) The parties shall establish four Conference Area Iron and Steel Agreements supplemental to the National Master Freight Agreement.

(c) The jurisdiction covered by the National Master Freigtht Agreement and its various Supplements thereto includes, without limitation, stuffing, stripping, loading and discharging of cargo or containers. This does not include loading or discharging of cargo or containers to or from vessels except in those instances where such work is presently being performed. Existing practices, rules and understandings, between the Company and the Union, with respect to this work shall continue except to the extent modified by mutual agrement.

Section 3. Non-Covered Units

This Agreement shall not be applicable to those operations of the Employer where the employees are covered by a collective bargaining agreement with a Union not signatory to this Agreement, or to those employees who have not designated a signatory Union as their collective bargaining agent.

When a majority of the eligible employees performing work covered by an Agreement designated by the National Negotiating Committee to be Supplemental to the National Master Freight Agreement (to which their Employer is a prior signator in the case of designated office and garage supplements), execute a card authorizing a signatory Local Union to represent them as their collec-

tive bargaining agent at the terminal location, then, such employees shall automatically be covered by this Agreement and the applicable Supplemental Agreements. In such cases the parties may by mutual agreement negotiate wages and conditions, subject to Conference Joint Area Committee approval.

Notwithstanding the foregoing paragraph, the provisions of the National Master Freight Agreement and the applicable over-the-road and local cartage Supplemental Agreements shall be applied, without evidence of Union representation of the employees involved, to all subsequent additions to, and extensions of, current operations which adjoin and are utilized as a part of such current operation, and newly established terminals and consolidations of terminals utilized as part of such current operation. The provisions of Article 32 (Subcontracting) shall apply to this paragraph.

Section 4. Single Bargaining Unit

The employees, unions, employers and associations covered under this Master Agreement and the various Supplements thereto shall constitute one bargaining unit. It is understood that the printing of this Master Agreement and the aforesaid Supplements in separate Agreements is for convenience only and is not intended to create separate bargaining units.

This National Master Agreement applies to city and road operations, and other classifications of employment authorized by the signatory employers to be represented by Trucking Employers, Inc. and by other employers and Associations participating in national collective bargain-

ing. The common problems and interests, with respect to basic terms and conditions of employment, have resulted in the creation of the National Master Freight Agreement and the respective Supplemental Agreements. Accordingly, the Associations and employers, parties to this Agreement, acknowledge that they constitute a single National multi-employer collective bargaining unit, composed of the associations named hereinafter and those employers authorizing such associations to represent them for the purpose of collective bargaining, and solely to the extent of such authorization, and such other individual employers which have, or may, become parties to this Agreement.

Section 5. Riders

Riders or Supplements to this Agreement providing for better wages, hours and working conditions, which have been negotiated by Local Unions and Employers affected and put into effect, shall be continued, and shall be improved wherever required by the 1973 amendments to this Agreement except as to those better Riders which by agreement of the parties are subject to mutual agreement and adjustment on the supplemental area level. Such Riders, as improved, shall be submitted to the Conference Joint Area Committee for approval.

No new Riders or Supplements to this Agreement shall be negotiated unless approved by the Conference Joint Area Committee, if confined to that Conference Area, or by the National Grievance Committee if applicable to more than one Conference Area.

Riders to this Agreement and to Supplements thereto between Local Unions and

Employers that do not meet the standards set forth in the National Master Agreement and Supplements thereto, shall be continued pending negotiations for amendment of such riders which negotiations shall be conducted and concluded within 90 days after July 1, 1973. In the event no agreement is concluded, the matter shall be referred during such period to the Conference Joint Area Committee, if confined to that Conference Area, or to the National Grievance Committee if applicable to more than one Conference Area, for final disposition. If the Conference Joint Area Committee or the National Grievance Committee as the case may be cannot finally dispose of the matter, such riders, and any other substandard Rider not submitted or approved, shall be null and void. However, wage and monetary matters negotiated in this Agreement shall become effective July 1, 1973.

ARTICLE 3.

Recognition, Union Shop and Check-Off

Section 1. Recognition

(a) The Employer recognizes and acknowledges that the National Union Committee and Local Unions affiliated with the International Brotherhood of Teamsters are the exclusive representatives of all employees in the classifications of work covered by this Master Agreement, and Supplements thereto for the purpose of collective bargaining as provided by the National Labor Relations Act.

Subject to Article 2, Section 3 (Non-Covered Units), this provision shall apply to all present and subsequently acquired operations and terminals of the Employer.

This provision shall not apply to wholly-owned and wholly independently operated subsidiaries which are not under contract with local IBT unions. "Wholly independently operated" means, among other things, that there shall be no interchange of freight, equipment or personnel, or common use, in whole or in part, of equipment, terminals, property, personnel, or rights.

(b) All present employees who are members of the Local Union on the effective date of this subsection or on the date of execution of this Agreement, whichever is the later, shall remain members of the Local Union in good standing as a condition of employment. All present employees who are not members of the Local Union and all employees who are hired hereafter shall become and remain members in good standing of the Local Union as a condition of employment on and after the 31st day following the beginning of their employment or on and after the 31st day following the effective date of this subsection or the date of this Agreement, whichever is the later. An employee who has failed to acquire, or thereafter maintain, membership in the Union as herein provided, shall be terminated seventy-two (72) hours after his Employer has received written notice from an authorized representative of the Local Union, certifying that membership has been, and is continuing to be, offered to such employee on the same basis as all other members and, further, that the employee has had no-

tice and opportunity to make all dues or initiation fee payments. This provision shall be made and become effective as of such time as it may be made and become effective under the provisions of the National Labor Relations Act, but not retroactively.

(c) When the Employer needs additional men he shall give the Local Union equal opportunity with all other sources to provide suitable applicants, but the Employer shall not be required to hire those referred by the Local Union.

(d) No provision of this Article shall apply in any state to the extent that it may be prohibited by state law. If under applicable state law additional requirements must be met before any such provision may become effective, such additional requirements shall be first met.

If any agency shop clause is permissible in any state where the provisions of this Article relating to the Union Shop cannot apply, the following Agency Clause shall prevail:

(1) Membership in the Local Union is not compulsory. Employees have the right to join, not join, maintain, or drop their membership in the Local Union, as they see fit. Neither party shall exert any pressure on, or discriminate against, an employee as regards such matters.

(2) Membership in the Local Union is separate, apart and distinct from the assumption by one of his equal obligation to the extent

that he receives equal benefits. The Local Union is required under this Agreement to represent all of the employees in the bargaining unit fairly and equally without regard to whether or not an employee is a member of the Local Union. The terms of this Agreement have been made for all employees in the bargaining unit and not only for members in the Local Union, and this Agreement has been executed by the Employer after it has satisfied itself that the Local Union is the choice of a majority of the employees in the bargaining unit. Accordingly, it is fair that each employee in the bargaining unit pay his own way and assume his fair share of the obligation along with the grant of equal benefits contained in this Agreement.

(3) In accordance with the policy set forth under subparagraphs (1) and (2) of this Section all employees shall, as a condition of continued employment, pay to the Local Union, the employee's exclusive collective bargaining representative, an amount of money equal to that paid by other employees in the bargaining unit who are members of the Local Union, which shall be limited to an amount of money equal to the Local Union's regular and usual initiation fees, and its regular and usual dues. For present employees, such pay-

ments shall commence thirty-one (31) days following the effective date or on the date of execution of this Agreement, whichever is the later, and for new employees, the payment shall start thirty-one (31) days following the date of employment.

(e) If any provision of this Article is invalid under the law of any state wherein this contract is executed, such provision shall be modified to comply with the requirements of State Law or shall be re-negotiated for the purpose of adequate replacement. If such negotiations shall not result in mutually satisfactory agreement, either party shall be permitted all legal or economic recourse.

(f) In those instances where subsection (b) hereof may not be validly applied, the Employer agrees to recommend to all employees that they become members of the Local Union and maintain such membership during the life of this Agreement, to refer new employees to the Local Union representative, and to recommend to delinquent members that they pay their dues since they are receiving the benefits of this Agreement.

(g) To the extent such amendment may become permissible under applicable Federal and State Law during the life of this Agreement as a result of legislative, administrative or judicial determination, all of the provisions of this Article shall be automatically amended to embody the greater

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Union security provisions contained in the 1947-1949 Central States Area Over-the-Road Motor Freight Agreement, or to apply or become effective in situations not now permitted by law.

(h) Nothing contained in this section shall be construed so as to require the Employer to violate any applicable law.

Section 2. Probationary and Casual Employees

A new employee shall work under the provisions of this Agreement but shall be employed only on a thirty-day trial basis, during which period he may be discharged without further recourse; provided, however, that the Employer may not discharge or discipline for the purpose of evading this Agreement or discriminating against Union members. After thirty days the employee shall be placed on the regular seniority list.

In case of discipline within the thirty-day period, the Employer shall notify the Local Union in writing.

Any employee hired as a casual or part-time worker shall not become a seniority employee under these provisions where it has been agreed by Employer and Union that he was hired for casual or part-time work. The words "casual" or "part-time" as used herein are meant to cover situations such as replacement for absenteeism and vacations.

Any employee hired as a casual or part-time worker shall not become a seniority employee until he meets the requirements of the appropriate Supplemental Agreement under which he is employed.

If employees are hired through an employment agency, the Employer is to pay the employment agency fee.

However, if the Local Union was given equal opportunity to furnish employees under Article 3, Section (1)(c), and if the employee is retained through the probationary period, the fee need not be paid until the 31st day of employment.

Section 3. Check-Off

The Employer agrees to deduct from the pay of all employees covered by this Agreement the dues, initiation fees and/or uniform assessments of the Local Union having jurisdiction over such employees and agrees to remit to said Local Union all such deductions prior to the end of the month for which the deduction is made. Where laws require written authorization by the employee, the same is to be furnished in the form required.

The Local Union shall certify to the Employer in writing each month a list of its members working for the Employer who have furnished to the Employer the required authorization, together with an itemized statement of dues, initiation fees, (full or installment), or uniform assessments owed and to be deducted for such month from the pay of such member, and the Employer shall deduct such amount from the first pay check following receipt of statement of certification of the member and remit to the Local Union in one lump sum. The Employer shall add to the list submitted by the Local Union the names of all regular new employees hired since the last list was submitted and delete the names of employees who are no longer employed.

Where an employee who is on check-off is not on the payroll during the week in which the deduction is to be made or has no earnings or insufficient earnings during that week or is on leave of absence, the employee must make arrangements with the Local Union to pay such dues in advance.

The Employer will recognize authorization for deductions from wages, if in compliance with state law, to be transmitted to the Local Union or to such other organizations as the Union may request if mutually agreed to, except DRIVE deductions which shall be made annually. No such authorization shall be recognized if in violation of state or federal law. No deduction shall be made which is prohibited by applicable law.

In the event that an Employer has been determined to be in violation of this Article by the decision of an appropriate grievance committee, and if such Employer subsequently is in violation thereof after receipt of seventy-two (72) hours written notice of specific delinquencies, the Local Union may strike to enforce this Article. However, such strike shall be terminated upon the delivery thereof. Errors or inadvertent omissions relating to individual employees shall not constitute a violation.

Section 4. Work Assignments

The Employers agree to respect the jurisdictional rules of the Union and shall not direct or require their employees or persons other than the employees in the bargaining units here involved, to perform work which is recognized as the work of the employees in said units. This is not to interfere with bona fide contracts with bona fide unions.

Section 5.

The term "Local Union" as used herein refers to the I.B.T. Local Union which represents the employees of the particular employer for the purpose of collective bargaining at the particular place or places of business to which this Agreement and the Supplements thereto are applicable, unless, by agreement of the Local Unions involved, or a Change of Operations Committee, jurisdiction over such employees, or any number of them, has been transferred to some other Local Union, in which case the term Local Union as used herein shall refer to such other Local Unions.

ARTICLE 4.

Stewards

The employer recognizes the right of the Local Union to designate job stewards and alternates from the Employer's seniority list. The authority of job stewards and alternates so designated by the Local Union shall be limited to, and shall not exceed, the following duties and activities:

(1) The investigation and presentation of grievances with his Employer or the designated company representative in accordance with the provisions of the collective bargaining agreement;

(2) The collection of dues when authorized by appropriate Local Union action;

(3) The transmission of such messages and information, which shall originate with, and are authorized by the Local Union

or its officers, provided such message and information,

(a) have been reduced to writing; or,

(b) if not reduced to writing, are of a routine nature and do not involve work stoppages, slowdowns, refusal to handle goods, or any other interference with the Employer's business.

Job Stewards and alternates have no authority to take strike action, or any other action interrupting the Employer's business, except as authorized by official action of the Local Union. The Employer recognizes these limitations upon the authority of job stewards and their alternates, and shall not hold the Union liable for any unauthorized acts. The Employer in so recognizing such limitations shall have the authority to impose proper discipline, including discharge, in the event the shop steward has taken unauthorized strike action, slowdown or work stoppage in violation of this Agreement.

Stewards shall be permitted reasonable time to investigate, present and process grievances on the company property without loss of time or pay during his regular working hours without interruption of the Employer's operation by calling group meetings; and where mutually agreed to by the Local Union and Employer, off the property or other than during his regular schedule without loss of time or pay. Such time spent in handling grievances during the Steward's regular working hours shall be considered working hours in computing daily

and/or weekly overtime if within the regular schedule of the Steward.

ARTICLE 5.

Section 1. Seniority Rights

Seniority rights for employees shall prevail under this Agreement and all Agreements supplemental hereto. Seniority shall only be broken by discharge, voluntary quit, more than a three (3) year layoff, or for such greater period than three (3) years as a change of operations committee may direct during the third year as provided in Article 8, Section 6 herein, or as provided in any applicable provisions of the Supplemental Agreements. The extent to which seniority shall be applied and accrued as well as the methods and procedures of such application shall be clearly set forth in each of the Supplemental Agreements.

Section 2. The Employer shall not require, as a condition of continued employment, that an employee purchase truck, tractor and/or tractor and trailer or other vehicular equipment, or that any employee purchase or assume any proprietary interest or other obligation in the business.

Section 3. (a) In the event that the Employer absorbs the business of another private, contract or common carrier, or is a party to a merger of lines, the seniority of the employees absorbed or affected thereby shall be determined by mutual agreement between the Employer and the Unions involved.

In the application of this provision, the following general rules shall

apply when operations or terminals are merged, subject however to the provisions of Section 7 of this Article:

(1) The active seniority roster (excluding those employees on letter of layoff) of employees involved in the merger of terminals or operations are to be "dovetailed" by appropriate classification (i.e., road, city,) in the order of the last date of Company employment in such classification. In addition, the inactive seniority rosters (employees who are on letter of layoff) shall be similarly "dovetailed" by appropriate classification. The active merged seniority roster shall be utilized first to provide employment at the merged terminal or operation. If and when additional employees are required at the merged facility, they shall be recalled from the merged inactive roster and after recall such employees shall be "dovetailed" into the active roster with full seniority. Seniority rosters previously combining job classifications shall be continued unless agreed otherwise.
In the application of this rule, it is immaterial whether the transaction is called a merger, purchase, acquisition, sale, etc. It is also immaterial whether the transaction involves merely the purchase of stock of one corporation by another, with

two separate corporations continuing in existence, and it is immaterial whether separate terminals of the Companies are physically merged or not, subject, however, to rules 2, 3, and or operation.

(2) If the transaction involved constitutes merely a purchase of permits or rights only by one carrier from another carrier, without the purchase or acquisition of equipment or terminals, the employees of the company selling the permits shall have the right to follow their jobs with dovetail seniority as provided herein.

(3) If the merger, purchase, acquisition, sale, etc. involves two Companies which do not have parallel operating rights then separate seniority lists will be maintained for the separate non-parallel operations. However, there will be one master seniority list for the purpose of fringe benefits, etc., and for the protection of employees laid off on one seniority board when work opportunities are available on the other seniority board and all eligible employees on such other seniority board are employed.

(4) Where the transaction involves both parallel and non-parallel rights then rule 1 above will apply to the parallel rights, and rule 3 will apply to non-parallel rights.

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(5) Where only temporary authority is granted in connection with any of the transactions described above, then separate seniority lists shall continue only when terminals or operations are not merged, unless otherwise agreed. The Company which is to survive will assume the obligations of both collective bargaining agreements during the period of the temporary authority.

(6) If in connection with the transactions described in these rules the successor Company determines to discontinue the use of a Local Cartage Company, the employees of that Local Cartage Company who have worked exclusively on the pick-up and delivery service which is retained by the successor Company shall be given opportunity to continue to perform such service as an employee of such successor Company, and shall have their seniority "dovetailed" as described in the above rules.

(7) Area and/or State Committees created pursuant to Local Supplements which have previously established rules of seniority, not contrary to the provisions of such Supplements, and approved by the Joint Area Committee, may continue to apply such rules if such rules are reduced to writing.

(b) If the minimum wage, hour and working conditions in the company

absorbed differ from those minimums set forth in this Agreement and Supplements thereto, the higher of the two shall remain in effect for the men so absorbed.

Section 4. The Union reserves the right to cut the road seniority board when the average weekly earnings fall to $200.00 or less. This is not to be construed as imposing a limitation on earnings. After the Union notifies the Employer verbally to cut the board and the Employer refuses to do so, the Union shall immediately submit its request again in writing to the Employer. If the Employer still refuses to cut the board after receiving the written request, then his refusal to do so shall be considered a grievance to be handled in accordance with the grievance procedure set forth in this Agreement. After the Joint State Committee or the Joint Area Committee renders a decision favorable to the Union, if the Employer still refuses to cut the board then in such case the Union shall have the right to strike notwithstanding any provisions in this Agreement to the contrary, and the Employer shall be obligated to pay all employees under this Agreement for all time lost.

In determining whether average weekly earnings will fall to $200.00 or less, only the earnings of the lower twenty-five per cent (25%) of the drivers on the seniority board, counting from the bottom up, shall be considered. The average shall be calculated for the thirty (30) day period preceding the Union's original request. After such calculation is made, the average earnings of the drivers for

the seniority board must also average the top seventy-five per cent (75%) of more than $200.00 per week, or layoff shall be made in accordance with seniority. The above provisions shall also apply to extra board for sleeper drivers exclusively.

Section 5. (a) Opening of new branches, terminals, divisions or operations.

New Branches, etc.

(1) When a new branch, terminal, division or operation is opened (except as a replacement for existing operations or as a new division in a locality where there are existing operations), the Employer shall offer the opportunity to transfer to regular positions in the new branch, terminal, division, or operation in the order of their company or classification seniority, to employees in those branches, terminals, divisions or operations which are affected in whole or in part by the opening of the new branch, terminal, division or operation.

This provision is not intended to cover situations where there is replacement of an existing operation or where a new division is opened in a locality where there is an existing terminal. In these latter situations, laid-off or extra employees in the existing facilities shall have first opportunity for employment at the new operation in accordance with their seniority. If all regular full-time positions

are not filled in this manner, then the provisions of the above paragraph shall apply.

(2) Any employee redomiciled by an approved change of operations or voluntary transfer to another point shall upon reporting to his new domicile be deemed to have relinquished his right to return, with seniority, to the domicile from which he was transferred, except under another approved change of operations. Employees who avail themselves of the transfer privileges because they are on layoff at their original terminal may exercise their seniority rights if work becomes available at the original terminal during the three year layoff period allowed them at their original terminal.

Closing of Branches, etc.

(b) Closing of branches, terminals, divisions or operations.

(1) When a branch, terminal, division or operation is closed and the work of the branch, terminal, division or operation is eliminated, an employee who was formerly employed at another branch, terminal, division or operation shall have the right to transfer back to such former branch, terminal, division or operation and exercise his seniority based on the date of hire at the branch, terminal, division or operation into which he is transferring provided he has not been away from such

three years.

(2) When a branch, terminal, division or operation is closed or partially closed and the work of the branch, terminal, division or operation is transferred to another branch, terminal, division or operation in whole or in part, employees at the closed or partially closed down branch, terminal, division or operation shall have the right to transfer to the branch, terminal, division or operation into which the work was transferred prior to the recall of laid off employees at that location. Such employees transferring as a result of an approved change of operations, shall be dovetailed with their full classification seniority (city or road) into the active seniority roster at the point of redomicile, excluding those employees on letter of layoff. If and when additional employees are required at the point of redomicile, employees on layoff status at that location shall be recalled. When recalled, such laid off employees shall be dovetailed with their full seniority.

(c) When a branch, terminal, division or operation is closed and the work of the branch, terminal, division or operation is eliminated, employees who are laid off thereby shall be given first opportunity for available regular employment at any other branch, terminal, division or opera-

tion of the Employer within the Area of the Supplemental Agreement under which employed. The obligation to offer such employment shall continue for a period of three years from the date of closing. However, the Employer shall not be required to make more than one offer during this period. Any employee accepting such offer shall pay his own moving expenses. If hired, he shall go to the bottom of the seniority board but shall have company seniority for fringe benefits only.

Qualifications

(d) In all transfers referred to in Section 5(a), (b) and (c) above the employee must be qualified to perform the job by experience in the classification.

If a driver test is required, such test shall be given by a qualified driver-supervisor or driver.

Section 6. The Union shall be entitled to a seniority list each six months upon request. The Employer shall post a seniority list at least once every twelve (12) months. Employees shall make written complaint to the Company and Union within 30 days after such posting. Any such complaint not settled between the Company and Union shall be submitted to the grievance procedure.

Section 7. The parties acknowledge that the above rules are intended solely as general standards and further that many factual situations are presented to Committees which necessitate modification or amendment. Accordingly, the Employers and Unions acknowledge that questions of

seniority rights may arise which require different treatment and it is understood that the Employers and Unions jointly involved, and/or the respective grievance committees may mutually agree to such disposition of questions of seniority which in their judgment is appropriate under the circumstances. The Change of Operations Committee provided in the National Master Freight Agreement or the Supplemental Agreements shall have the authority to determine the establishment and application of seniority in those situations presented to them. In all cases the seniority decisions of the Joint Committees, including the Change of Operations Committees and Subcommittees, established by the National Master Freight Agreement and the respective Supplemental Agreements shall be final and binding.

ARTICLE 6.

Section 1.

Maintenance of Standards

The Employer agrees that all conditions of employment in his individual operation relating to wages, hours of work, overtime differentials and general working conditions shall be maintained at not less than the highest standards in effect at the time of the signing of this Agreement, and the conditions of employment shall be improved whenever specific provisions for improvement are made elsewhere in this Agreement.

It is agreed that the provisions of thi section shall not apply to inadvertent or bona fide errors made by the Employer or the Union in applying the terms and conditions of this Agreement if such

error is corrected within ninety (90) days from the date of the error. If not corrected within ninety (90) days, such better condition shall remain in effect. However, a request for relief from such error may be filed in writing with the appropriate Conference Joint Area Committee, by a majority vote, shall determine whether and in what manner such better terms and/or conditions resulting from such error shall be continued or eliminated.

No other Employer shall be bound by the voluntary acts of another Employer when he may exceed the terms of this Agreement.

Any disagreement between the Local Union and the Employer with respect to this matter shall be subject to the grievance procedure.

This provision does not give the Employer the right to impose or continue wages, hours and working conditions less than those contained in this Agreement.

Section 2.

Extra Contract Agreements

The Employer agrees not to enter into any agreement or contract with his employees, individually or collectively, which in any way conflicts with the terms or provisions of this Agreement. Any such agreement shall be null and void.

Section 3.

Work Week Reduction

It is understood and agreed that should it subsequently be determined that any employees come under the provisions of the Fair Labor Standards Act or any similar legislation, then as to such employees, any provisions of this Agreement that do not comply with the requirements of said statutes are to be

changed so that there is no violation of the statutes. If such changes result in substantial penalties to either the employees or the Company, a written notice shall be sent by either party requesting negotiations to change such provision or provisions as are affected. Thereafter the Union and the Company shall enter into immediate negotiations for the purpose of arriving at a mutually satisfactory solution. In the event the parties cannot agree on a solution to any problems arising from this section within 60 days after receipt of the stated written notice, either party shall be allowed economic recourse.

Section 4. New Equipment

Where new types of equipment and/or operations for which rates of pay are not established by this Agreement are put into use after July 1, 1973, within operations covered by this Agreement, rates governing such operations shall be subject to negotiations between the parties.

In the event agreement cannot be reached within sixty (60) days after date such equipment is put into use, the matter may be submitted to the National Grievance Committee for final disposition. Rates agreed upon or awarded shall be effective as of the date equipment is put into use.

ARTICLE 7.

Local and Area Grievance Machinery

Provisions relating to Local, State and Area Grievance Machinery are set forth in the applicable Supplements to this Agreement.

The procedure set forth in the Local,

State and Area grievance machinery and in the National Grievance procedure may be invoked only by the authorized Union representative or the Employer. Authorized representatives of the Union may file grievances alleging violation of the Agreement, under local grievance procedure, or as provided herein. Time limitations regarding the filing of grievances, if not set forth in the respective Supplemental Agreements, must appear in the Rules of Procedure of the various grievance committees and shall apply equally to Employers and employees.

ARTICLE 8.

National Grievance Procedure

Section 1.

All grievances or questions of interpretations arising under this Master Agreement or Supplemental Agreements thereto shall be processed as set forth below. If such Supplemental Agreements provide for arbitration of discharges, such procedure shall be continued.

(a) All factual grievances or questions of interpretation arising under the provisions of the Supplemental Agreement, (or factual grievances arising under the National Master Agreement) shall be processed in accordance with the grievance procedure of the applicable Supplemental Agreement.

If upon the completion of the grievance procedure of the Supplemental Agreement the matter is deadlocked, the case shall be immediately forwarded to both the Employer and Union Secretaries of the National Grievance Committee, together with

all pertinent files, evidence, records and committee transcripts.

Any request for interpretation of the National Master Agreement shall be submitted directly to the Conference Joint Area Committee for the making of a record on the matter, after which it shall be immediately referred to the National Grievance Committee. Such request shall be filed with both the Union and Employer Secretaries of the National Grievance Committee with a complete statement of the matter.

(b) Any matter which has been referred pursuant to Section 1(a) above, or any question concerning the interpretation of the provisions contained in the Master Agreement, shall be submitted to a permanent National Grievance Committee which shall be composed of an equal number of Employer and Union representatives. The National Grievance Committee shall meet quarterly, for the disposition of grievances referred to it, or may meet at more frequent intervals, upon call of the Chairman of either the Employer or Union representatives on the National Grievance Committee. The National Grievance Committee shall adopt rules of procedure which may include the reference of disputed matters to subcommittees for investigation and report, with the final decision or approval, however, to be made by the National Grievance Committee. If the National Grievance Committee resolves the dispute by a majority vote of those present

and voting, such decision shall be final and binding upon all parties.

If the National Grievance Committee is deadlocked on the disposition of the dispute then either party shall be entitled to all lawful economic recourse to support its position in the matter. In considering factual disputes that are deadlocked or deadlocked questions of interpretation arising out of Supplemental Agreements, the decision of the National Grievance Committee shall be based solely on the provisions of the applicable Supplemental Agreement.

Section 2. Work Stoppages

(a) It is mutually agreed that the Local Union will, within two weeks of the date of the signing of this Agreement, serve upon the Employer a written notice listing the Union's authorized representatives who will deal with the Employer, make commitments for the Local Union generally and, in particular, those individuals having the sole authority to act for the Local Union in calling or instituting strikes or any stoppages of work which are not in violation of this Agreement. The Local Union may from time to time amend its listing of authorized representatives by certified mail. It is further agreed that in all cases of an unauthorized strike, slowdown, walkout, or any unauthorized cessation of work in violation of this Agreement the Local Union shall not be liable for damages resulting from such unauthorized acts of its members.

In the event of a work stoppage, slowdown, walkout, or cessation of work in violation of this Agreement, the Employer shall immediately send a wire to the appropriate Area Conference to determine if such strike, etc. is authorized. No strike, slowdown, walkout or cessation of work in violation of this Agreement shall be deemed to be authorized unless notification thereof by telegram has been received by the Employer and Local Union from such Area Conference. If no response is received by the Employer within twenty-four (24) hours after request, excluding Saturday, Sunday and holidays, such strike, etc. in violation of this Agreement shall be deemed to be unauthorized by the Area Conference for the purposes of this Agreement.

In the event of an unauthorized work stoppage or picket line etc., in violation of this Agreement, the Local Union shall immediately make every effort to persuade the employees to commence the full performance of their duties and shall immediately inform the employees that the work stoppage and/or picket line is unauthorized and in violation of this Agreement. The question of whether employees who refuse to work during such unauthorized work stoppages, in violation of this Agreement, or who fail to cross unauthorized picket lines at their Employer's premises shall be considered as participating in an unauthorized work stoppage in violation of this Agreement, may be submitted to the grievance procedure, but not the amount of suspensions herein referred to.

It is specifically understood and agreed that the Employer, during the first twenty-four (24) hour period of such unauthorized work stoppage in violation of this Agreement, shall have the sole and complete right of reasonable discipline, including suspension from employment, up to and including thirty (30) days, but short of discharge, and such employees shall not be entitled to or have any recourse to the grievance procedure. In addition, it is agreed between the parties that if any employee repeats any such unauthorized strike, etc., in violation of this Agreement, during the term of this Agreement, the Employer shall have the right to further discipline or discharge such employee without recourse for such repetition. After the first twenty-four (24) hour period of an unauthorized stoppage in violation of this Agreement, and if such stoppage continues, the Employer shall have the sole and complete right to immediately further discipline or discharge any employee participating in any unauthorized strike, slowdown, walkout, or any other cessation of work in violation of this Agreement, and such employees shall not be entitled to or have any recourse to the grievance procedure. The suspension or discharge herein referred to shall be uniformly applied to all employees participating in such unauthorized activity. The

Employer shall have the sole right to schedule the employees' period of suspension.

The International Brotherhood of Teamsters, Teamsters National Freight Industry Negotiating Committee, Area Conferences, Joint Councils and Local Unions shall make immediate efforts to terminate any strike or stoppage of work as aforesaid which is not authorized by such organizations, without assuming liability therefor. For and in consideration of the agreement of the International Brotherhood of Teamsters, Teamsters National Freight Industry Negotiating Committee, Area Conferences, and Joint Councils affiliated with the International Brotherhood of Teamsters to make the aforesaid efforts including the use of all reasonable means at their disposal to require Local Unions and their members to comply with the law or the provisions of this Agreement, including the provisions limiting strikes, work stoppages, as aforesaid, the Associations and Employers who are parties hereto agree that they will not hold the International Brotherhood of Teamsters, Teamsters National Freight Industry Negotiating Committee, Area Conferences, or Joint Councils liable or sue them in any court or before any administrative tribunal for undertaking such efforts to terminate unauthorized strikes or stoppages of work as aforesaid or for undertaking such efforts to require Local Unions and their members to comply with the law or the provisions of this Agreement. It is further agreed that signator associations and Employers will not hold the International Brotherhood of Teamsters, Teamsters National Freight Industry Negotiating Committee, Area Conferences or Joint Councils liable or sue them in any court or before any administrative tribunal for such unauthorized work stoppages alleging condonation, ratification or assumption of liability for undertaking such efforts to terminate strikes or stoppages of work or requiring Local Unions and their members to comply with the law or the provisions of this Agreement.

The provisions of this Article shall continue to apply during that period of time between the expiration of this Agreement and the conclusion of the negotiations or the effective date of the successor Agreement, whichever occurs later. It is understood and agreed that failure by the International Brotherhood of Teamsters, Teamsters National Freight Industry Negotiating Committee, Area Conferences and/or the Joint Councils to authorize a strike by a Local Union shall not relieve such Local Union of liability for a strike authorized by it and which is in violation of this Agreement.

(b) The question of whether the International Union, Teamsters National Freight Industry Negotiating Committee, an Area Conference, Joint Council or Local Union have met

their obligation set forth in the immediately preceding paragraph or the question o. whether the International Union, Teamsters National Freight Industry Negotiating Committee, an Area Conference, Joint Council or the Local Union, separately or jointly, participated in an unauthorized work stoppage, slowdown, walkout or cessation of work in violation of the Agreement by calling, encouraging, assisting or aiding in such stoppage, etc., in violation of this Agreement, or whether an Employer engaged in a lockout in violation of this Agreement shall be submitted to the grievance procedure at the national level, prior to the institution of any damage suit action. When requested, the Co-Chairmen of the National Grievance Committee shall immediately appoint a subcommittee to develop a record by collecting evidence and hear testimony, if any, on the sole question of whether the International Union, Teamsters National Freight Industry Negotiating Committee, an Area Conference, Joint Council or Local Unions have met their obligation as aforesaid or of Union participation or Employer lockout in violation of this Agreement. The record shall be immediately forwarded to the National Grievance Committee for decision. If a decision is not rendered within thirty (30) days after the Co-Chairmen have convened the National Committee, the matter shall be considered deadlocked.

A majority decision of the National Grievance Committee on the questions presented as aforesaid shall be final and binding on all parties. If such majority decision is rendered in favor of one or more of the Union entities, or the Employer, in the case of lockout, no damage suit proceedings on the issues set forth in this Article shall be instituted against such Union entity or such Employer. If, however, the National Grievance Committee is deadlocked on the issues referred to in this subsection 2 (b), either party may institute damage suit proceedings, but the record of the National Grievance Committee and its Subcommittees shall not be offered in evidence by either party for any purpose. Except as provided in this subsection 2 (b), agreement to utilize this procedure shall not thereafter in any way limit or constitute a waiver of the right of the Employer or Union to commence damage suit action. However, the use of evidence in this procedure shall not waive the right of the Employer or Union to use such evidence in any litigation relating to the strike or lockout, etc., in violation of this Agreement. There shall not be any strike, slowdown, walkout, cessation of work or lockout as a result of a deadlock of the National Grievance Committee on the questions referred to under this subsection 2 (b), and any such activity shall be considered a violation of this Agreement.

Nothing herein shall prevent the Employer or Union from securing remedies granted by law except as specifically set forth in this subsection 2 (b).

Section 3. The National Grievance Committee by majority vote may consider and review all questions of interpretation which may arise under the provisions contained in the Master Agreement which are submitted by either the Union Area Director or the designated Employer representative; and shall have the authority to reverse and set aside the majority interpretation of any area, regional, or local grievance committee if, in its opinion, such interpretation is contrary to the provisions set forth in the Master Agreement, in which case the decision of the National Grievance Committee shall be final and binding.

Section 4. Any provisions in the grievance procedure of any Supplement hereto which would require deadlocked disputes to be determined by any arbitration process shall be null and void as to any grievances involving interpretation of the Supplemental Agreement or this National Master Agreement. The decision of the National Grievance Committee as to whether a grievance involves an interpretation which is subject to this procedure shall be final and conclusive.

Section 5. In the event of strikes, work stoppages, or other activities which are permitted in case of deadlock, default or failure to comply with majority decisions under this Agreement or any Supplement

thereto, no interpretation of this Agreement or any Supplement thereto by any tribunal shall be binding upon the Union or affect the legality or lawfulness of the strikes unless the Union stipulates to be bound by such interpretation, it being the intention of the parties to resolve all questions of interpretation by mutual agreement.

Section 6.

Change of Operations

Present terminals, breaking points or domiciles shall not be transferred or changed without the approval of an appropriate change of operations committee. Such committee shall be appointed in each of the Conference Areas, equally composed of employer and union representatives. The change of operations committee shall have the authority to determine the seniority of the employees affected and such determination shall be final and binding.

The change of operations committee shall also have jurisdiction for a period of twelve (12) months following the opening of a new terminal to consider the redomicile of employees who are laid off as a direct result of such opening of terminal.

This committee shall also have jurisdiction over the closing of terminals in regard to seniority. This shall not apply within a 25-mile radius. In considering any change of operations, this committee shall have the power to extend the three (3) year layoff period contained in Article 5, Section 1, or in applicable Supplemental Agreements, in the event it appears toward the end of such period that the circumstances warrant.

The Committee shall observe the employer's right to designate home domiciles and the operational requirements of the business. However, individual employees shall not be redomiciled more than once during the term of the contract as a result of an approved change of operations unless a merger, purchase, sale, acquisition, or consolidation of employers is involved, or unless the change of operations committee rules to the contrary based on the facts presented.

The National Grievance Committee shall adopt Rules of Procedure concerning the application and administration of this Article.

The Employer shall notify all affected Local Unions of the proposed Change of Operations at least twenty (20) calendar days prior to the hearing at the Joint Area Conference Committee and the Employer and the Local Unions affected shall have a mutual responsibility to inform the affected employees prior to such hearing in accordance with the practice and procedures agreed to in the respective area committees. Any exception or waiver of the aforesaid twenty (20) day period shall be mutually agreed to between the Employer and the Local Unions affected and approved by the Conference Area Change of Operations Committee.

Where an employee is required, through no fault of his own, to change domicile in order to follow employment as a result of an approved Change of Operations the Employer shall move the employee and assume the responsibility for proven loss of or damage to household goods due to such move including insur-

ance against loss or damage. Should any employee possess household items of unusual or extraordinary value which will be included in the move such items shall be declared and an appraised value determined prior to the move. The Employer shall provide packing materials for the employee's household goods when requested or at the employee's request pay all costs and expenses of moving such household goods, including packing. This shall not apply to moves within a 50 miles radius.

The Employer shall pay reasonable expenses to demount and remount an employee's mobile home, if used as his residence and in such instance shall pay normal expenses to move such mobile home, including the use of other modes of transportation where required by law.

The Employer shall provide lodging for the employee at the point of redomicile, not to exceed thirty (30) calendar days, and in addition, shall reimburse the employee 10¢ per mile to transport one personal automobile to the new location.

The Employer shall not be responsible for moving expenses if the employee changes his residence as a result of voluntary transfer.

Section 7. All local, area, and national grievance committees as constituted under this agreement shall have the jurisdiction and power to decide grievances which arose under the preceding agreements and supplements thereto, applying, however, the contract under which the grievance arose.

ARTICLE 9.

Protection of Rights

Section 1. Picket Lines It shall not be a violation of this Agreement, and it shall not be cause for discharge or disciplinary action in the event an employee refuses to enter upon any property involved in a primary labor dispute, or refuses to go through or work behind any primary picket line, including the primary picket line of Unions party to this Agreement, and including primary picket lines at the Employer's places of business.

Section 2. Struck Goods It shall not be a violation of this Agreement and it shall not be cause for discharge or disciplinary action if any employee refuses to perform any service which his Employer undertakes to perform as an ally of an Employer or person whose employees are on strike, and which service, but for such strikes, would be performed by the employees of the Employer or person on strike.

Section 3. Subject to Article 32 hereof (Subcontracting), the Employer agrees that it will not cease or refrain from handling, using, transporting or otherwise dealing in any of the products of any other employer or cease doing business with any other person, or fail in any obligation imposed by the Motor Carriers' Act or other applicable law, as a result of individual employees exercising their rights under this Agreement or under law, but the Employer shall notwithstanding any other provision in this Agreement, when necessary, continue doing such business by other employees.

Section 4. The layover provisions of the applicable Supplemental Agreement shall apply when the employer knowingly dispatches a road driver to a terminal at which a primary picket line has been posted as a result of the exhaustion of the grievance procedure, or after proper notification of a picket line permitted by the collective bargaining agreement, or economic strikes occurring after the expiration of collective bargaining agreements or to achieve a collective bargaining agreement. In such event and upon his request a driver shall be provided first class public transportation to his home terminal, plus be paid a minimum of eight (8) hours or actual time spent while returning, whichever is greater. The Employer shall determine the mode of transportation to be utilized.

Section 5. Grievances Within five (5) working days of filing of grievance claiming violation of this Article, the grievance shall be submitted directly to the National Grievance Committee without taking any intermediate steps, any other provisions of this Agreement to the contrary notwithstanding.

ARTICLE 10.

Loss or Damage

Section 1. Employees shall not be charged for loss or damage unless clear proof of gross negligence is shown. This Article is not to be construed as permitting charges for loss or damage to equipment under any circumstances.

Section 2. The Union and Employers jointly recognize that the loss and theft of freight, equipment, materials and supplies, in

whatever manner, pose a threat to the well being of the employees including loss of employment, and to the trucking industry. As a result, it is hereby agreed to create a national committee comprised of four union and four employer members for the purpose of investigating these subjects and to make recommendations to the National Negotiating Committee for appropriate remedial action.

In addition, a committee shall be appointed in each of the Conference areas comprised of four members, two from industry and two from the Union. The Conference Committee is to consult with and cooperate with the Employers or Unions on the subjects set forth herein.

ARTICLE 11.

Bonds

Should the Employer require any employee to give bond, cash bond shall not be compulsory, and any premium involved shall be paid by the Employer.

The primary obligation to procure the bonds shall be on the Employer. If the Employer cannot arrange for a bond within ninety (90) days, he must so notify the employee in writing. Failure to so notify shall relieve the employee of the bonding requirement. If proper notice is given, the employee shall be allowed thirty (30) days from the date of such notice to make his own bonding requirements, standard premiums only on said bond to be paid by the Employer. A standard premium shall be that premium paid by the Employer for bonds applicable to all other of its employees in

similar classifications. Any excess premium is to be paid by the employee. Cancellation of a bond after once issued shall not be cause for discharge unless the bond is cancelled for cause which occurs during working hours, or due to the employee having given a fraudulent statement in obtaining said bond.

ARTICLE 12.

Uniforms

The Employer agrees that if any employee is required to wear any kind of uniform as a condition of his continued employment, such uniform shall be furnished and maintained by the Employer, free of charge, at the standard required by the Employer.

The Employer shall replace all clothing, glasses, hearing aids and/or dentures not covered by company insurance or workmen's compensation which are destroyed or damaged in a wreck or fire with company equipment.

The Employer has the right to establish and maintain reasonable standards for wearing apparel and personal grooming.

ARTICLE 13.

Passengers

No driver shall allow anyone, other than employees of the Employer, who are on duty, to ride on his truck except by written authorization of the Employer, except in cases of emergency arising out of disabled commercial equipment or an Act of God. No more than two (2) people shall ride in the cab of a tractor unless required by government agencies or

the necessity of checking of equipment. This shall not prohibit drivers from picking up other drivers, helpers or others in wrecked or broken down motor equipment and transporting them to the first available point of communication, repair, lodging or available medical attention. Nor shall this prohibit the transportation of other drivers from the driver's own company at a delivery point or terminal to a restaurant for meals.

ARTICLE 14.

Compensation Claims

The Employer agrees to cooperate toward the prompt disposition of employee on-the-job injury claims. The Employer shall provide Workmen's Compensation protection for all employees even though not required by state law or the equivalent thereof if the injury arose out of or in the course of employment.

An employee who is injured on the job, and is sent home, or to a hospital, or who must obtain medical attention, shall receive pay at the applicable hourly rate for the balance of his regular shift on that day. An employee who has returned to his regular duties after sustaining a compensable injury who is required by the workmen's compensation doctor to receive additional medical treatment during his regularly scheduled working hours shall receive his regular hourly rate of pay for such time.

In the event that an employee sustains an occupational illness or injury while on a run away from his home terminal the Employer shall provide transportation by bus, train, plane, or automobile

to his home terminal if and when directed by a doctor.

The Employer agrees to provide any employee injured locally, transportation at the time of injury, from the job to the medical facility and return to the job, or to his home if required.

In the event of a fatality, arising in the course of employment, while away from the home terminal, the Employer shall return the deceased to his home at the point of domicile.

ARTICLE 15.

Military Clause

Employees enlisting or entering the military or naval service of the United States, pursuant to the provisions of the Military Selective Service Act of 1967, as amended, shall be granted all rights and privileges provided by the Act.

The Employer shall pay the Health and Welfare and Pension Fund contributions on employees on leave of absence for training in the military reserves or National Guard, but not to exceed fourteen (14) days, providing such absence effects his credits or coverage for Health and Welfare and/or Pensions.

ARTICLE 16.

Equipment, Accidents, Reports

The Employer shall not require employees to take out on the streets or highways any vehicle that is not in safe operating condition or equipped with the safety appliances prescribed by law. It shall not be a violation of this Agreement where employees refuse to operate

such equipment unless such refusal is unjustified. All equipment which is refused because not mechanically sound or properly equipped, shall be appropriately tagged so that it cannot be used by other drivers until the maintenance department has adjusted the complaint. After equipment is repaired, the Employer shall place on such equipment an "OK" in a conspicuous place so the driver can see the same.

Under no circumstances will an employee be required or assigned to engage in any activity involving dangerous conditions of work or danger to person or property or in violation of any applicable statute or court order, or in violation of a government regulation relating to safety of person or equipment. The term "dangerous conditions of work" does not relate to the type of cargo which is hauled or handled.

Any employee involved in any accident shall immediately report said accident and any physical injury sustained. When required by his Employer, the employee, before starting his next shift, shall make out an accident report in writing on forms furnished by the Employer and shall turn in all available names and addresses of witnesses to the accident. The employee shall receive a copy of the accident report that he submits to his Employer. Failure to comply with this provision shall subject such employee to disciplinary action by the Employer.

Employees shall immediately, or at the end of their shift, report all defects of equipment. Such reports shall be made on a suitable form furnished by the Em-

ployer and shall be made in multiple copies, one copy to be retained by the employee. The Employer shall not ask or require any employee to take out equipment that has been reported by any other employee as being in an unsafe operating condition until same has been approved as being safe by the mechanical department.

When the occasion arises where an employee gives written report on forms in use by the Employer of a vehicle being in an unsafe working or operating condition, and receives no consideration from the Employer, he shall take the matter up with the officers of the Union who will take the matter up with the Employer.

If the Employer requests a regular employee to qualify on equipment requiring a special license or in the event an employee is required to qualify (recognizing seniority) on such equipment in order to obtain a better job opportunity, with his Employer, the Employer shall allow such regular employee the use of the equipment in order to take the examination.

All equipment used as City Peddle trucks and equipment regularly assigned to peddle runs must have steps or other similar device to enable drivers to get in and out of the body.

The Employer shall install heaters and defrosters on all trucks and tractors.

The Employer and the Union together shall create a joint committee of qualified representatives for the purpose of consulting among themselves and with appropriate Government agencies, state

and federal, on matters involving highway and equipment safety.

There shall be first line tires on steering axle of road units.

All new road equipment regularly assigned to the fleet after July 1, 1973 shall be equipped with air-ride seats on the driver's side.

ARTICLE 17.

Pay Period

The Joint Area Committee or the National Grievance Committee and the Employer may by mutual agreement waive the provisions of Local Supplements dealing with pay periods upon a satisfactory showing of necessity by the Employer.

ARTICLE 18.

Other Services

In the event an Employer party to this Agreement may require the services of employees coming under the jurisdiction of this Agreement in a manner and under conditions not provided for in this Agreement, then and in such instances the Local Union and the Employer concerned may negotiate such matters for such specific purposes, subject to the approval of the Joint Area Committee.

ARTICLE 19.

Posting .

Section 1.

Posting of Agreement

A copy of this Agreement shall be posted in a conspicuous place in each garage and terminal.

Section 2.

Union Bulletin Boards

The Employer agrees to provide suitable space for the Union bulletin board in each garage, terminal or place of work. Postings by the Union on such boards are to be confined to official business of the Union.

ARTICLE 20.

Union and Employer Cooperation

The Union, its members and the Employer agree at all times as fully as it may be within their power to further their mutual interest and welfare of the Trucking industry and the International Brotherhood of Teamsters nationwide.

The Union and the Employer recognize the principle of a fair day's work for a fair day's pay; that jobs and job security of employees working under this Agreement are best protected through efficient and productive operations of the employer and the Trucking industry. The Employer may establish reasonable work standards which shall take into account all factors relating to the work assignment, run, terminal and territorial operational conditions, subject to agreement and approval with the Local Union, and to be filed for approval with the Conference Joint Area Committee.

The Union and Trucking industry agree to establish a Committee on Industry Operations composed of equal numbers of members from the industry and each Union conference area. The purposes of the Committee are to identify problems causing loss of business and jobs, for any reasons; to direct communication so as to educate employees relative to long-term job security through the employer,

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the Local Unions signatory to this agreement, or other means. It is to be recognized as a joint Union and Employer effort, and shall have the full support of the International Union and the industry. Such Committee shall investigate and make recommendations to the National Grievance Committee on a quarterly basis designed to eliminate operational inefficiencies.

In addition, the Committee on Industry Operations shall advise the Joint National Negotiating Committees of specific recommendations to achieve operational efficiencies as well as steady growth in the Motor Carrier Industry in writing six (6) months prior to the expiration of the current Agreement.

The purpose of this statement of principle is to protect the long-range interests of the employees, the Company, the Union and the general public served.

ARTICLE 21.

Union Activities

Any employee member of the Union acting in any official capacity whatsoever shall not be discriminated against for his acts as such officer of the Union so long as such acts do not interfere with the conduct of the Employer's business, nor shall there be any discrimination against any employee because of union membership or activities.

ARTICLE 22.

Owner-Operators

Owner-operators (See Note), other than certificated or permitted carriers, shall not be covered by this Agreement unless

Section 1. affiliated by lease with a certificated or permitted carrier which is required to operate in full compliance with all the provisions of this Agreement and holding proper ICC and state certificates and permits. Such owner-operators shall operate exclusively in such service and for no other interests.

(NOTE: Whenever "owner-operator" is used in this Article, it means owner-driver only, and nothing in this Article shall apply to any equipment leased except where owner is also employed as a driver.)

Section 2. This type of operator's compensation for wages and working conditions shall be in full accordance with all the provisions of this Agreement. The owner-operator shall have seniority as a driver only.

Section 3. Certificate and title to the equipment must be in the name of the actual owner.

Section 4. In all cases, hired or leased equipment shall be operated by an employee of the certificated or permitted carrier. The performance of unit work by owner-operators shall be governed by the provisions of this Agreement and Supplements relating to owner-operators. The employer expressly reserves the right to control the manner, means and details of, and by which, the owner-operator performs his services, as well as the ends to be accomplished.

Section 5. Certificated or permitted carriers shall use their own available equipment, together with all leased equipment under minimum thirty-day (30) bona fide lease

arrangements, on a rotating board, before hiring any extra equipment.

Section 6. Separate checks shall be issued by the certificated or permitted carriers for driver's wages and equipment rental. At no time shall the equipment check be for less than actual miles operated. Separate checks for drivers shall not be deducted from the minimum truck rental revenue. The driver shall turn in time direct to the certificated or permitted carrier. All monies due the owner-operator may be held no longer than two weeks, except where the lease of equipment agreement is terminated and in such case all monies due the operator may be held no longer than thirty (30) days from the date of the termination of the operation of the equipment.

Section 7. Payment for equipment service shall be handled by the issuance of a check for the full mileage operated, tonnage or percentage, less any agreed advances. A statement of any charges by the certificated or permitted carrier shall be issued at the same time, but shall not be deducted in advance.

Section 8. The owner-operator shall have complete freedom to purchase gasoline, oil, grease, tires, tubes, etc., including repair work, at any place where efficient service and satisfactory products can be obtained at the most favorable prices.

Section 9. There shall be no deduction pertaining to equipment operation for any reason whatsoever.

Section 10. The Employer or certificated or permitted carrier hereby agrees to pay road or mile tax, social security tax, compensation insurance, public liability and property damage insurance, bridge tolls, fees for certificates, permits and travel orders, fines and penalties for inadequate certificates, license fees, weight tax and wheel tax, and for loss of driving time due to waiting at state lines, and also cargo insurance. It is expressly understood that the owner-driver shall pay the license fees in the state in which title is registered. All tolls, no matter how computed, must be paid by the Employer regardless of any agreement to the contrary.

All taxes or additional charges imposed by law relating to actual truck operation and use of highways, no matter how computed or named, shall be paid by the Carrier, excepting only vehicle licensing as such, in the state where title is registered.

Section 11. There shall be no interest or handling charge on earned money advanced prior to the regular pay day.

Section 12. (a) All certificated or permitted carriers hiring or leasing equipment owned and driven by the owner-operator shall file a true copy of the lease agreement covering the owner-driven equipment with the Joint Area Committees. The terms of the lease shall cover only the equipment owned and driven by the owner-operator and shall be in complete accord with the minimum rates and conditions provided herein, plus the

full wage rate and supplementary allowances for drivers as embodied elsewhere in this Agreement.

(b) The minimum rates for leased equipment owned and driven by the owner-operator, the minimum guarantees for tractors and trailers, and other conditions are set forth in the Area Supplement attached hereto.

Section 13. Driver-owner mileage scale does not include use of equipment for pick-up or delivery at point of origin terminal or at point of destination terminal, but shall be subject to negotiations between the Local Union and Employer. Such negotiations shall be only for the purpose of protecting the wage rate of the driver only as an employee. Failure to agree shall be submitted to the grievance procedure.

Section 14. There shall be no reductions where the present basis of payment is higher than the minimums established herein for this type of operation. Where owner-operator is paid on a percentage or tonnage basis and the operating company reduces its tariff, the percentage or tonnage basis of payment shall be automatically adjusted so that the owner-operator suffers no reduction in equipment rental or wages, or both.

Section 15. It is further understood and agreed that any arrangements which have heretofore been entered into between members of this Union, either among themselves or with the Employer or with the aid of the Employer, applicable to owner-operator equipment contrary to the terms hereof, shall be dissolved or modified within

thirty (30) days after the signing of this Agreement so that such arrangements shall apply only to equipment of the owner-operator while being driven by such owner-operator. In the event that the parties cannot agree on a method of dissolution or modification of such arrangement to make the same conform to this Agreement, the question of dissolution or modification shall be submitted to arbitration, each party to select one member of the arbitration board, and the two so selected to choose a third member of said board. If the two cannot agree upon the third within five (5) days, he shall be appointed by the Joint Area Committee. The decision of said board is to be final and binding.

Section 16. It is further agreed that the intent of this clause and this entire Agreement is to assure the payment of the Union scale of wages as provided in this Agreement and to prohibit the making and carrying out of any plan, scheme or device to circumvent or defeat the payment of wage scales provided in this Agreement. This clause is intended to prevent the continuation of or formation of combinations or corporations or so-called lease of fleet arrangements whereby the driver is required to and does periodically pay losses sustained by the corporation or fleet arrangement, or is required to accept less than the actual cost of the running of his equipment, thus, in fact, reducing his scale of pay.

Section 17. It is further agreed that if the Employer or certificated or permitted carrier requires that the owner-operator sell his

equipment to the Employer or certificated or permitted carrier, directly or indirectly, the owner-operator shall be paid the fair true value of such equipment. Copies of the instruments of sale shall be filed with the Union and unless objected to within ten (10) days shall be deemed satisfactory. If any question is raised by the Union as to such value, the same shall be submitted to arbitration, as above set forth, for determination. The decision of the arbitration board shall be final and binding.

Section 18. It is further agreed that the Employer or certificated or permitted carrier will not devise or put into operation any scheme, whether herein enumerated or not, to defeat the terms of the Agreement, wherein the provisions as to compensation for services of and for use of equipment owned by owner-operator shall be lessened, nor shall any owner-operator lease be cancelled for the purpose of depriving employees of employment, and any such complaint that should arise pertaining to such cancellation of lease or violation under this section shall be subject to the discharge and grievance provisions of the Area Supplement.

Section 19. (a) The use of individual owner-operators shall be permitted by all certificated or permitted carriers who will agree to submit all grievances pertaining to owner-operators to joint Employer-Union grievance committees in each respective state. It is understood and agreed that all such grievances will be promptly heard and decided with the specific purpose in mind of:

(1) protecting provisions of the Union Agreement;

(2) prohibiting any and all violations directly or indirectly of Agreement provisions relating to the proper use of individual owners;

(3) prohibiting any attempts by any certificated or permitted carrier in changing his operations which will affect the rights of drivers under the terms of the Agreement, and generally the certificated or permitted carriers agree to assume responsibility in policing and doing everything within their power to eliminate all alleged abuses in the use of owner-operators which resulted in the insertion of Section 19 (Article 33) in the original 1945-47 Central States Over-the-Road agreement;

(4) owner-operator operations to be terminal to terminal, except where no local employees to make such deliveries or otherwise agreed to in this agreement;

(5) the certificated or permitted carriers agree that they will, with a joint meeting of the Unions, set up uniform rules and practices under which all such cases will be heard.

(6) it shall be considered a violation of this Agreement should any operator deduct from rental of equipment the increases provi-

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ded for by the 1973 Amendments or put into effect any means of evasion to circumvent actual payment of increases agreed upon effective for the period starting July 1, 1973, and ending March 31, 1976.

(b) No owner-operator shall be permitted to drive or hold seniority where he owns three or more pieces of leased equipment. This provision shall not apply to present owner-operators having three or more pieces of equipment under lease agreement, but such owner-operator shall not be permitted to put additional equipment in service so long as he engages in work covered by this Agreement or holds seniority. Where such owner-operator drives, he can hold seniority where he works sixty (60) per cent or more of the time.

Section 20. All leases, agreements or arrangements between carriers and owner-operators shall contain the following statement: The equipment which is the subject of this lease shall be driven by an employee of the lessee at all times that it is in the service of the lessee. If the lessor is hired as an employee to drive such equipment he shall receive as rental compensation for the use of such equipment no less than the minimum rental rates, allowances, and conditions (or the equivalent thereof as approved by the Joint Area Committee), established by the then current appropriate Area Over-The-Road Motor Freight Supplemental Agreement, for this type of equipment, and, in addi-

tion thereto, the full wage rate and supplementary allowances for drivers (or the equivalent thereof as approved by the Joint Area Committee).

The lessee expressly reserves the right to control the manner, means and details of, and by which the driver of such leased equipment performs his services, as well as the ends to be accomplished.

To the extent that any provision of this lease may conflict with the provisions of such appropriate Area Over-The-Road Motor Freight Supplemental Agreement as it applies to equipment driven by the owner such provision of this lease shall be null and void and the provisions of such Agreement shall prevail.

ARTICLE 23.

Separation of Employment

Upon discharge the Employer shall pay all money due to the employee during the first payroll department working day. Failure to do so shall subject the Employer to pay liquidated damages in the amount of eight (8) hours pay for each day of delay. Upon quitting, the Employer shall pay all money due to the employee on the pay day in the week following such quitting.

ARTICLE 24.

Inspection Privileges

Authorized agents of the Union shall have access to the Employer's establishment during working hours for the purpose of adjusting disputes, investigating working conditions, collection of dues, and ascertaining that the Agreement is

being adhered to, provided, however, there is no interruption of the firm's working schedule.

ARTICLE 25.

Separability and Savings Clause

If any Article or Section of this Agreement or of any Supplements or Riders thereto should be held invalid by operation of law or by any tribunal of competent jurisdiction, or if compliance with or enforcement of any Article or Section should be restrained by such tribunal pending a final determination as to its validity, the remainder of this Agreement and of any Supplements or Riders thereto, or the application of such Article or Section to persons or circumstances other than those as to which it has been held invalid or as to which compliance with or enforcement of has been restrained, shall not be affected thereby.

In the event that any Article or Section is held invalid or enforcement of or compliance with which has been restrained, as above set forth, the parties affected thereby shall enter into immediate collective bargaining negotiations after receipt of written notice of the desired amendments by either employer or union for the purpose of arriving at a mutually satisfactory replacement for such Article or Section during the period of invalidity or restraint. There shall be no limitation of time for such written notice. If the parties do not agree on a mutually satisfactory replacement within sixty (60) days after receipt of the stated written notice, either party shall be permitted all legal or economic recourse in

support of its demands notwithstanding any provisions of this Agreement to the contrary.

ARTICLE 26.

Time Sheets and Time Clocks

In Over-the-Road or Line operations, the Employer shall provide and require the employee to keep a time sheet or trip card showing the arrival and departure at terminal and intermediate stops and cause and duration of all delays, time spent loading and unloading, and same shall be turned in at the end of each trip.

In Local Cartage operations a daily time record shall be maintained by the Employer at its place of business. All Employers who employ five (5) or more people at any terminal shall have time clocks at such terminals.

Employees shall punch their own time cards.

ARTICLE 27.

Emergency Reopening

In the event of war, declaration of emergency or imposition of economic controls during the life of this Agreement, either party may re-open the same upon sixty (60) days written notice and request renegotiation of matters dealing with wages and hours. There shall be no limitation of time for such written notice. Upon the failure of the parties to agree in such negotiations within sixty (60) days thereafter either party shall be permitted all lawful economic recourse to support its request for revisions. If Governmental approval of revisions should become necessary, all parties will cooper-

ate to the utmost to attain such approval. The parties agree that the notice provided herein shall be accepted by all parties as compliance with the notice requirements of applicable law, so as to permit economic action at the expiration thereof.

ARTICLE 28.

Sympathetic Action

In the event of a labor dispute between any Employer, party to this Agreement, and any International Brotherhood of Teamsters' Union, parties to this or any other International Brotherhood of Teamsters' Agreement, during the course of which dispute such Union engages in lawful economic activities which are not in violation of this or such other Agreement, then any other affiliate of the International Brotherhood of Teamsters, having an Agreement with such Employer shall have the right to engage in lawful economic activity against such Employer in support of the above first-mentioned Union notwithstanding anything to the contrary in this Agreement or the International Brotherhood of Teamsters' Agreement between such employer and such other affiliate.

ARTICLE 29.

Section 1. **Piggy-Back, Barge, etc.**

The Union reserves the right to re-open this agreement for the purpose of negotiations for employees engaged in operations which combine with or are part of other methods of transportation such as "piggy-back," barge, etc. If the parties are unable to agree upon such matters, the Union may engage in lawful economic recourse in support of its demands.

Section 2. On operations covered by this Agreement which combine with or are a part of other methods of transportation including leasers, full and complete records of handling, dispatch and movement of such units are to be kept by the Employer and such records are to be made available for inspection by the representatives of the Union in the locality affected by such operations. Trailers piggy-backed or hauled by leasers in combination with road operations are to be signed in and signed out on the regular dispatch sheet kept in road operations. These sheets will be made available, upon request, to the drivers for a period of ten (10) days. Where inspection of the records indicates that piggy-back is being used as a substitute for road operations rather than handling overflow traffic, the grievance procedure may be invoked to provide a reasonable remedy for any local union adversely affected by the improper usage of substituted service.

Section 3. This Article shall not apply to such operations as were in existence prior to December 31, 1955, but shall apply to any extension, addition, modification or any similar change (exclusive of increase in volume) in such prior operations.

Section 4. An Employer shall not use piggy-back, birdy-back, fishy-back or barge operations, etc. over the same route where he has established relay runs or through runs, except to move overflow freight. If a driver is available (which includes the one (1) hour period of time prior to end of his rest period) at point of origin when a trailer leaves the yard for the piggy-back, birdy-back, fishy-back or barge operations ramp, such driver's run-around compensation shall start from the time the trailer leaves the yard. Available regular drivers at relay points shall be protected against run-arounds if a violation occurred at point of origin.

ARTICLE 30.

Jurisdictional Disputes

In the event that any dispute should arise between any Local Unions, parties to this Agreement, Supplements or Riders thereto or between any local Union, party to this Agreement, Supplements or Riders thereto and any other Union, relating to jurisdiction over employees or operations covered by such Agreements, the Employer and the Local Unions agree to accept and comply with the decision or settlement of the Unions or Union bodies which have the authority to determine such dispute, and such disputes shall not be submitted to arbitration under this Agreement, Supplements or Riders thereto or to legal or administrative agency proceedings. Pending such determination, the Employer shall not be precluded from seeking appropriate legal or administrative relief against work stoppages or picketing in furtherance of such dispute.

ARTICLE 31.

Multi-Employer, Multi-Union Unit

The parties agree to become a part of the multi-employer, multi-union bargaining unit established by this National Master Agreement, and to be bound by the interpretations and enforcement of this National Master Agreement and Supplements thereto.

The parties further agree to participate in joint negotiations of any modification or renewal of this National Master Agreement and Supplements thereto and to remain a part of the multi-employer, multi-union bargaining unit set forth in such renewed Agreement and Supplements.

ARTICLE 32.

Subcontracting

Section 1. For the purpose of preserving work and job opportunities for the employees covered by this Agreement, the Employer agrees that no work or services of the kind, nature or type covered by, presently performed, or hereafter assigned to the collective bargaining unit will be subcontracted, transferred, leased, assigned or conveyed in whole or in part to any other plant, person or nonunit employees, unless otherwise provided in this Agreement.

The Employer may subcontract work when all of his regular employees are working, except that in no event shall road work presently performed or runs established during the life of this Agreement be farmed out. No dock work shall be farmed out except for existing situations established by agreed to past practices. Overflow loads may be delivered by drivers other than the Employer's employees provided that this shall not be used as a subterfuge to violate the provisions of this Agreement. Loads may also be delivered by other agreed to methods or as presently agreed to.

The normal, orderly interlining of freight for peddle on occasional basis, where

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there are parallel rights, and when not for the purpose of evading this Agreement may be continued as has been permitted by past practice providing it is not being done to defeat the provisions of this contract.

The interlining of freight or a division of tariff, for any purpose, including local cartage, dock, hostling and delivery is included within the term subcontracting as used in this Article and may be continued as has been permitted by past practice providing it is not being done to defeat the provisions of this contract.

In the event that an employer signatory to this Agreement utilizes personnel on a regular basis which has been supplied by a labor contractor, as such to perform subcontracting work permitted by this Agreement, such personnel shall receive the wages, hours and general working conditions provided herein.

Section 2. Within five (5) working days of filing of grievance claiming violation of this Article, the parties to this Agreement shall proceed to the final step of the grievance procedure, without taking any intermediate steps, any other provision of this Agreement to the contrary notwithstanding.

ARTICLE 33.

Cost of Living

All employees covered by this Agreement shall be covered by the provisions of a cost-of-living allowance, as set forth in the section.

The amount of the cost-of-living allowance shall be determined and redeter-

mined as provided below on the basis of the "Consumer Price Index for Urban Wage Earners and Clerical Workers (All Items) published by the Bureau of Labor Statistics, U.S. Department of Labor (1957-1959 = 100)" and referred to herein as the "Index."

The first cost-of-living allowance shall be effective the first pay period beginning on or after July 1, 1974, based on the difference between the Index figure of March, 1973, and the Index figure for February, 1974, and shall continue in effect until the first pay period beginning on and after July 1, 1975.

The second cost-of-living allowance shall be effective the first pay period beginning on and after July 1, 1975, based on the difference between the Index figure of March, 1974, and the Index figure for February, 1975, and shall continue in effect to and including March 31, 1976. Adjustments in the cost-of-living allowance shall be made on the basis of changes in the Index as follows:

First Allowance:

Index Increase from March, 1973

There shall be a 1¢ per hour or .25 mill per mile adjustment for every .3 point increase in the Index.

For example:

	Allowance	
	Per Hour	*Per Mile*
First .3 point	1¢	.25 mill
Second .3 point	2¢	.50 mill
Third .3 point	3¢	.75 mill
Fourth .3 point	4¢	1.00 mill
Fifth .3 point	5¢	1.25 mill

Sixth .3 point	6¢	1.50 mill
Seventh .3 point	7¢	1.75 mill
Eighth .3 point	8¢	2.00 mill

Second Allowance:

Index Increase from March, 1974

There shall be a 1¢ per hour or .25 mill per mile adjustment for every .3 point increase in the Index.

There shall be a maximum of 11¢ an hour (or 2.75 mills per mile) adjustment payable under each of the two allowances, but a minimum increase of 8¢ an hour (or 2.00 mills per mile) shall be guaranteed under each such allowance. In the event that the Bureau of Labor Statistics shall not issue the appropriate Index on or before the beginning of one of the pay periods referred to herein, any adjustment in the allowance required by such Index shall be effective at the beginning of the first pay period after receipt of such Index. No adjustments, retroactive or otherwise, shall be made in the amount of the cost-of-living allowance due to any revision which later may be made in the published figures for the Index for any month on the basis of which the allowance has been determined. The cost-of-living allowance shall not become a fixed part of the base rates for any classification.

A decline in the Index shall not result in a reduction of classification base rates.

Continuance of the cost-of-living allowance shall be contingent upon the continued availability of official monthly Bureau of Labor Statistics Price Index in its present form and calculated on the same basis as the Index for 1965 un-

less otherwise agreed upon by the parties.

Cost-of-living increases, if any, shall be applied to the hourly and mileage rates except where specifically provided otherwise in the Supplemental Agreements.

ARTICLE 34.

Moonlighting

The Employer shall not employ in any capacity any person who is otherwise regularly employed, provided however:

(1) This provision shall not apply where the Employer is presently using otherwise regularly employed persons who have acquired seniority and are receiving all other benefits of the agreement including fringe benefits. Such persons may be continued in employment.

(2) The Employer may hire persons who are otherwise regularly employed if other manpower is not available. Disagreement as to availability shall be subject to the grievance procedure. Such persons shall receive all benefits they are entitled to under the Agreement.

(3) In the event of layoff employees who have regular outside employment shall be first laid off regardless of such employee's seniority standing unless such employee immediately terminates such outside employment. In the event there are two or more employees having regular

outside employment, the Employer shall lay off the employee having the latest date of hire.

Any employee so laid off shall, as a condition of recall, terminate other regular employment which he may have, unless qualified for recall under Item 2 above.

Any employee employed under a Local Cartage Agreement who works a total of forty (40) or more hours a week for one Employer covered by a Local Cartage or Road Agreement shall receive double time for all work in excess of forty (40) hours he works in workweek from the second Employer for whom such hours in excess of forty (40) is performed after the Employer is notified by the Local Union.

Employees hired prior to August, 1964, or the effective date of the 1964 contract, having two (2) regular (even if part-time) jobs (acquired before August, 1964) are protected insofar as their seniority under the Master Freight Agreement with the following exceptions:

(a) If there is a layoff and employees working exclusively for a trucking company having seniority status would be laid off if the man with the two regular or part-time jobs above continues to work, the individual above with two regular or part-time jobs would be laid off first unless he elected to give up his other outside job.

(b) If an employee with lesser seniority

is laid off at the same time as the individual having two regular or part-time jobs and electing to keep both jobs, and there is a recall for additional employees, the man having exclusive employment with the trucking company under the Master Agreement would be subject to recall first.

(c) The only time the man with two regular or part-time jobs would be subject to recall would be when all employees with seniority were returned to work and additional men are needed, subject to Section 2, of Article 34.

(d) This applies to regular or part-time employees on two jobs.

(e) This shall not prohibit local unions and employers from working out mutual problems for the benefit of parties concerned.

(f) Provisions of this Article shall not apply where a full-time employee with seniority in classification covered by this Agreement or Supplements works on a second job on his off-days or off-nights outside of the trucking industry.

ARTICLE 35.

Garnishments

In the event of notice to an Employer of a garnishment or impending garnishment the Employer may take disciplinary action if the employee fails to satisfy such garnishment within a seventy-two (72) hour period (limited to working days) after notice to the employee. However the Employer may not discharge any em-

ployee by reason of the fact that his earnings have been subject to garnishment for any one indebtedness. If the Employer is notified of three garnishments irrespective of whether satisfied by the employee within the seventy-two hour period, the employee may be subject to discipline, including discharge in extreme cases. However, if the Employer has an established practice of discipline or discharge with a fewer number of garnishments or impending garnishments if the employee fails to adjust the matter within the seventy-two (72) hour period, such past practice shall be applicable in those cases.

ARTICLE 36.

Section 1. Employee's Bail

Employees will be bailed out of jail if accused of any offense in connection with the faithful discharge of their duties, and any employee forced to spend time in jail or in courts shall be compensated at his regular rate of pay. In addition, he shall be entitled to reimbursement for his meals, transportation, court costs, etc. Provided, however, that faithful discharge of duties shall in no case include compliance with any order involving commission of a felony. In case an employee shall be subpoenaed as a Company witness he shall be reimbursed for all time lost and expenses incurred.

Section 2. Suspension or Revocation of License

In the event an employee shall suffer a suspension or revocation of his right to drive the Employer's equipment for any reason, he must notify his Employer in writing within a reasonable period of time. Failure to comply will subject the employee to disciplinary action up to

and including discharge in accordance with the procedures set forth in the appropriate supplement. If such suspension or revocation comes as a result of his complying with his company's instruction, which results in a succession of size and weight penalties or because he complied with his Employer's instruction to drive Company equipment which is in violation of D.O.T. regulations relating to equipment or because the Company equipment did not have either a speedometer or a tachometer in proper working order and if the employee has notified the Employer of the citation for such violation as above-mentioned, the Employer shall provide employment to such employee at not less than his regular earnings at the time of such suspension for the entire period thereof.

ARTICLE 37.

Training Program

In recognition of the mutual Union and Industry continuing need for trained trucking industry personnel, and the joint responsibility to those seeking employment in the industry who lack adequate qualifying industry experience, a subcommittee of the National Negotiating Committee has been requested to draft an on-the-job training program for new employees, which program may be utilized by individual Employers.

Such Subcommittee shall consist of an equal number of Union and Employer Representatives. It is agreed by the parties hereto that said Subcommittee with the approval of the Local Unions involved shall also have the authority to

make amendments to and revisions of the application of the National Master Freight Agreement and Supplemental Agreements with respect to wages, fringe benefits and seniority accrual for trainees as they deem necessary to accomplish any mutually agreed-to-training program.

ARTICLE 38.

Non-Discrimination

The Employer and the Union agree not to discriminate against any individual with respect to his hiring, compensation, terms or conditions of employment because of such individual's race, color, religion, sex, or national origin, nor will they limit, segregate or classify employees in any way to deprive any individual employee of employment opportunities because of his race, color, religion, sex, or national origin.

ARTICLE 39.

Duration

Section 1. This Agreement shall be in full force and effect from July 1, 1973, to and including March 31, 1976, and shall continue from year to year thereafter unless written notice of desire to cancel or terminate the Agreement is served by either party upon the other at least sixty (60) days prior to date of expiration.

Section 2. Where no such cancellation or termination notice is served and the parties desire to continue said Agreement but also desire to negotiate changes or revisions in this Agreement, either party may

serve upon the other a notice at least sixty (60) days prior to March 31, 1976, or March 31st of any subsequent contract year, advising that such party desires to revise or change terms or conditions of such Agreement.

Section 3. Revisions agreed upon or ordered shall be effective as of April 1, 1976, or April 1st of any subsequent contract year. The respective parties shall be permitted all legal or economic recourse to support their requests for revisions if the parties fail to agree thereon.

Section 4. In the event of an inadvertent failure by either party to give the notice set forth in Sections 1 and 2 of this Article, such party may give such notice at any time prior to the termination or automatic renewal date of this Agreement. If a notice is given in accordance with the provisions of this Section, the expiration date of this Agreement shall be the sixty-first (61st) day following such notice.

IN WITNESS WHEREOF the parties hereto have set their hands and seals this 28th day of June, 1973, to be effective as of July 1, 1973, except as to those areas where it has been otherwise agreed between the parties.

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NEGOTIATING COMMITTEE

FOR THE EMPLOYEES:
TEAMSTERS NATIONAL FREIGHT INDUSTRY NEGOTIATING COMMITTEE

Frank E. Fitzsimmons
(Chairman)

Murray W. Miller	Joseph Trerotola
Robert Holmes	Arnie Weinmeister
Weldon L. Mathis	Roy Williams
William J. McCarthy	Walter J. Shea
George E. Mock	Elvin E. Hughes
Einar O. Mohn	Robert T. Flynn
Joseph Morgan	Walter W. Teague
Edward Nangle	Howard Jones
William Presser	Verne Milton
Salvatore Provenzano	Robert Rampy
Ray Schoessling	Al Weiss

TRUCKING EMPLOYERS, INC.
C. G. Zwingle, Chairman

Arthur E. Imperatore	Robert F. Todd
Vincent R. Dagen	John A. Murphy
E. W. Swan	Charles J. Lawlor
Rudy Pulliam	R. S. McIlvennan

In behalf of the following associations:

Arizona Motor Truck League, Inc.

California Trucking Association

Carolina Transportation Association, Inc.

Carriers Council of New Hampshire, Inc.

Central Motor Freight Association, Inc.

Central Pensylvania Motor Carriers Conference, Inc.

Employers Council (of Maine)

Employers Group of Motor Freight Carriers, Inc.

Greater Newark Trucking Association

Indiana Motor Carriers Labor Relations Association, Inc.

Intermountain Operators League

Kentucky Motor Carriers Labor & Advisory Council, Inc.

Middlesex Motor Freight Carriers Association

Midwest Employers Labor Advisory Council, Inc. (Iowa and Minnesota)

Missouri-Kansas Motor Carriers Conference, Inc.

Motor Carriers Association of North Jersey

Motor Carriers Employers' Association (Michigan)

Motor Carriers of Virginia, Inc.

Motor Transport Labor Relations, Inc.

New England Motor Carriers Council, Inc.

New York State Employers' Association, Inc.

New York State Motor Truck Association, Inc.

Ohio Motor Carriers Labor Relations Association

Southeastern Area Motor Carriers Labor Relations Association

Southwest Operators Association

Tri-Area Labor Association

Tri-City Common Carriers Trucking Association

Truck Operators' League of Montana, Inc.

Truck Operators League of Oregon

Trucking Employers Labor Council of Maryland-District of Columbia

Washington Trucking Associations, Inc.

Western Empire Operators Association

Western Pennsylvania Motor Carriers Association, Inc.

Wisconsin Motor Carriers Labor Advisory Council

Other Associations and Employers:

Associated Industries of the Inland Empire
Ross E. Bray

California Labor Consultants
Clyde Yandell

Charles E. Hughes

Cascade Employers Association, Inc.
Pat Blair

Cedar Rapids Transfermens Association
W. B. Cass

Cleveland Draymen Association, Inc.
Joseph E. Gardner, President
Bernard S. Goldfarb, General Counsel

Highway Carriers Association of California
Seamon & Sparks

Hudson Valley Carriers Association
Jack Stewart

Industries Council
Phillip G. Johnson

Industrial Employers & Distributors Assn.

Irregular Route Carriers
Robert A Sullivan

Kansas City Cartagemen's Association
Larry Belger

Labor Relations Association
Monte Perkins

Master Truckmen of America Association

Michigan Cartagemen Association
Paul Hare
Howard McDougall

Mountain States Employers Council, Inc.
Jack I. Moore

Motor Carriers Council of St. Louis
Mitchell P. Campbell, Manager

Motor Carrier Labor Advisory Council
Frank G. Bridge
John H. King
William S. Thompson

National Perishable Commodities Conference
Robert A. Sullivan

National Steel Carriers' Association
Ron Crittenton

Nebraska Small Carriers Group
Robert K. Anderson

New England Short Haul Carriers Assn.
Paul J. Kingston

Northern Ohio Motor Truck Association, Inc.
James F. Nolan, President
Bernard S. Goldfarb, General Counsel

Perishable Commodities Association

Sacramento Valley Employers Council
Richard J. Jacinto

Steel Truckers Employer Association
George S. Maxwell

United Employers, Inc.
Stanley W. Skoog

IN WITNESS WHEREOF the undersigned duly execute The National Master Agreement and Supplemental Agreement (and Riders, if any) set forth herein.

FOR THE UNION

LOCAL UNION No....., affiliate of I. B. of T., C., W. & H., of A.

By .....
(Signed)

Its .....
(Title)

FOR THE COMPANY

.....
(Company)

By .....
(Signed)

Its .....
(Title)

Home Office Address:

.....
(Street)

.....
(City)

.....
(State)

.....
(Date Signed)

This agreement is approved as to form only by the International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, and in doing so the International Union assumes no liability whatsoever under this agreement for the performance thereof or otherwise, and by such approval does not become a party to the Agreement.

APPROVED

INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN AND HELPERS OF AMERICA

FRANK E. FITZSIMMONS,
General President

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New Jersey—New York Area Freight
Council of the
Eastern Conference of Teamsters

NEW JERSEY—NEW YORK AREA GENERAL TRUCKING SUPPLEMENTAL AGREEMENT

For the Period:
July 1, 1973 to March 31, 1976

NEW JERSEY - NEW YORK AREA

FREIGHT COUNCIL OF

THE EASTERN CONFERENCE OF TEAMSTERS

NEW JERSEY - NEW YORK AREA

GENERAL TRUCKING

SUPPLEMENTAL AGREEMENT

Covering Employees of Private, Common, Contract and Local Cartage Carriers for the Period of July 1, 1973 to March 31, 1976 in the jurisdiction of Teamsters Joint Council No. 16 and Teamsters Joint Council No. 73.

PREAMBLE

The .....
(Company)

hereinafter referred to as the Employer and the New Jersey-New York Area Freight Council, and Local Union No. ....., affiliated with the Eastern Conference of Teamsters, and the International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, hereinafter referred to as the Union, agree to be bound by the terms and provisions of this Agreement.

ARTICLE 40 — Scope of Agreement

Section 1. Operations Covered

The execution of this Agreement on the part of the Employer shall cover all truck drivers, helpers, switchers, platform men, warehousemen, checkers, motor lift truck operators, dragline em-

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ployees, riggers, office and clerical help, mechanics, garage employees and such other employees as may be presently or hereafter represented by the Union, engaged in the General Trucking Industry and such "rigging work" as may be incidental thereto, within the jurisdiction of the Local Union signatory to this Agreement.

Section 2. Employees Covered

Employees covered by this Agreement shall be construed to mean, but not limited to, any driver, chauffeur, or driver-helper operating a truck, tractor, motorcycle, passenger or horse-drawn vehicle, or any other vehicle operated on the highways, street or private road for transportation purposes when used to defeat the purposes of this Agreement. The term employee also includes but is not limited to, all employees used in dock work, switching, checking, dragline, stacking, loading, unloading, handling, shipping, receiving, assembling, office and garage work and such other employees as may be presently or hereafter represented by the Union.

Section 3.

The additional classifications of office and clerical help, mechanics, and garage employees referred to above shall become part of this Agreement, however, shall be subject to separate negotiations between the parties, and the wages, hours and working conditions to be attached as an Appendix to this Agreement, and become an integral part thereof. The foregoing shall apply only upon the Employer and the Union properly determining that the Union does, in fact, represent a majority of such employees within any of the stated categories.

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Section 4.

(a) This contract shall govern all wages, hours and other conditions herein set forth. All work covered by this Agreement shall be performed only by employees covered by this Agreement except as otherwise provided herein.

(1) Delivery and/or Pickup Area

Road Drivers shall not make pickup and/or delivery to consignee or shipper except as by past practice of the majority of the industry and the Local Union's recognized past delivery and/or pickup area. Road drivers may make drop off enroute to inbound destination at company terminals but may not pick up freight enroute to destination, however, on return trip to destination road driver may pick-up freight at outbound terminal to fill out load to destination. Where there is a dispute concerning pickup and/or delivery, it shall be subject to the grievance procedure. The above shall also apply to movement of empties between terminals.

(2) Where an Employer signatory to this contract changes his operations within the jurisdiction of the area that this Supplement covers, the present employees and present contract shall prevail at the new terminal or location and the displaced employees or the employees affected shall have a right in keeping with their present seniority to move to the new terminal or location with all seniority rights. In no event shall such a change be a violation of this Agreement. Where an Employer moves outside of the area of this Supplement, and has no existing terminal or branch, he shall first offer employment to present employees who are affected or will be affected at the new terminal at their present rates.

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Where the Employer presently operates a terminal and increases the need for the employees because of the closing of an existing terminal and operates back into the area of the closed terminal covered by this Supplement, the employees affected by the closing of the terminal shall have full seniority rights, wages and hours presently enjoyed in the area previously serviced.

(b) The operation of all trucks, tractors and trailers owned by or leased to, by or through the Employer while used for delivery and/or pick-up of freight shipped via the Employer in the delivery and/or pick-up area in the jurisdiction embraced by this Agreement, shall be performed exclusively by the employees of the Employer covered by this Agreement.

(c) The movement of equipment from the Employer's place of business to the place where the equipment is serviced or repaired shall be in accordance with past practices in each Local Union.

(d) All inter-terminal movement of freight from the Employer's place of business to other terminals of the Employer or other Employers in the New Jersey and New York area, and all movement of freight from the Employer's place of business destined for railroad or piggyback shipment shall be performed by employees of the Employer governed by this contract.

(e) An Employer who has a terminal in the area of this Supplemental Agreement may not close such terminal and utilize a terminal outside the area not covered by this Supplement to perform the same type of work which he pre-

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viously performed within the area unless with the approval of the Joint Area Committee.

(f) No Employer within the area of this Supplement shall be permitted to operate a Special Commodity or Steel Division unless agreed to by the Local Union and approved by the Joint Area Committee.

ARTICLE 41 – New Employees

Section 1. New Employees

The Employer shall immediately upon employment, notify the Shop Steward, or the Union if there is no Shop Steward, of the employment of any man, who, under this Agreement, is required to be a member of the Union. Upon notice from the Union that any employee who, thirty (30) days from the date of first employment, has failed to tender the periodic dues and initiation fees uniformly required as a condition of acquiring and retaining membership, the Employer agrees to terminate such employee after receipt of seventy-two (72) hours written notice, excluding Saturdays, Sundays and holidays, from a properly authorized official of the Union, certifying that membership has been and is continuing to be offered to such employee on the same basis as all other members and further that the employee has had notice and opportunity to make all dues payments. This provision shall be made and become effective as of such time as it may be made and become effective under the provisions of the National Labor Relations Act, but not retroactively.

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Section 2. Checkoff

The Employer agrees to deduct from all regular employees covered by this Agreement initiation fees, dues and uniform assessments of the Local Union having jurisdiction over such employees and agrees to remit to said Local Union all such deductions prior to the end of the month for which the deduction is made. Where laws require written authorization by the employee, the same is to be furnished in the form required. No deduction shall be made which is prohibited by applicable law.

Where Local Unions presently have a practice of quarterly dues paid in advance, same shall be continued, and payment by the Employer will be made quarterly, in accordance with past practice.

In the event that an Employer has been determined to be in violation of this article by decision of an appropriate grievance committee and if such Employer subsequently is in violation thereof, after receipt of seventy-two (72) hours written notice, excluding Saturdays, Sundays, and holidays, of specific delinquencies, the Local Union may strike to enforce this article. However, such strike shall be terminated upon the delivery thereof. Errors or inadvertent omissions relating to individual employees shall not constitute a violation.

By mutual agreement between the Union and Employer, the Employer shall deduct only calendar year dues during the first twelve weeks of each year. If employees have refunds due them for any reason they shall be so compensated.

Section 3. Blacklist

The Employer shall not establish or create a so-called "blacklist" nor in any way become a party to the establishing of such a blacklist that may have for its purpose the prevention of any member of the Union obtaining employment with any other Employer or Company.

Section 4. Hiring Additional Men

The Employer shall notify the Union when new employees are to be hired. The Union shall have the right to send applicants for the job or jobs and the Employer agrees to interview such applicants and give the same interview considerations to Union sent applicants as is given to applicants from other sources. This provision shall not be deemed to require the Employer to hire Union applicants or to preclude the Employer from hiring employees from other sources. The Employer reserves the right to finally pass on the qualifications and experience of all applicants for employment. During the probationary period of sixteen (16) days in a sixty (60) day calendar period, the employee may be discharged without further recourse; provided, that the Employer may not discharge or discipline for the purpose of evading this Agreement or discriminating against Union members. After the probationary period, the employee shall be placed on the regular seniority list. In case of discipline with the probationary period, the Employer shall notify the Local Union in writing.

If employees are hired through an employment agency, the Employer is to pay the employment agency fee. However, if the Union was given equal opportunity to furnish employees under Article 41, Section 4, and if the employee is retained

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through the probationary period, the fee need not be paid until the thirty-first (31st) day of employment.

Past practice shall apply to those companies which in the past employed lie detector and fingerprint test for all new permanent applicants, but shall not apply to individuals with seniority, or casual employees. No other companies shall institute this practice without mutual agreement between the Company and the Union.

Section 5. Supervisory Personnel

Supervisory personnel of the Employer shall be restricted from performing the work which is recognized as the work of the employees covered by this Agreement, except for purposes of instruction, or in accordance with Article 9.

ARTICLE 42 – Stewards

Stewards shall be granted super-seniority for all purposes including layoff, rehire, bidding, and job preference. One steward on the morning dispatch, in compliance with regular starting times, shall be the last man to leave the terminal.

The Union reserves the right to remove the shop steward at any time, for the good of the Union.

The job steward is recognized by the Employer to have no right to enter into any form or type of agreement with the Employer, except as authorized by the Local Union.

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ARTICLE 43 — Leave of Absence

Section 1. Time Off for Union Activities

The Employer agrees to grant the necessary and reasonable time off without discrimination or loss of seniority rights and without pay, to any employee designated by the Union to attend a labor convention or serve in any capacity on other official Union business, provided forty-eight (48) hours' written notice is given to the Employer by the Union, specifying length of time off. The Union agrees that, in making its request for time off for Union activities, due consideration shall be given to the number of men affected in order that there shall be no disruption of the Employer's operations due to lack of available employees.

Section 2. Leave of Absence

Any employee desiring leave of absence from his employment shall secure written permission from both the Local Union and Employer. The maximum leave of absence shall be for six (6) months and may be extended for like periods. Written permission for extension must be secured from both the Local Union and the Employer. During the period of absence, the employee shall not engage in gainful employment in the same industry in classifications covered by this contract. Failure to comply with this provision shall result in the complete loss of seniority rights for the employees involved. Inability to work because of proven sickness or injury shall not result in the loss of seniority rights. The employee must make suitable arrangements for continuation of Health and Welfare and Pension payments, where legally permissible, at his own expense before

the leave may be approved by either Local Union or Employer.

Section 3. Union Activity

(a) An employee who is a candidate for Union election shall be granted a two (2) weeks leave of absence.

(b) Any employee who is designated by the Union to work for the Union on a full time basis shall be granted a leave of absence, with no loss of seniority, for the duration of his full time employment provided he reports back to work to the Employer within ninety (90) days after his employment with the Union is terminated and does not work for any other Employer in the Industry during such period.

ARTICLE 44 — Seniority

Section 1. Seniority Principle

Seniority shall prevail in that the Employer recognizes the general principle that senior employees shall have preference to choose their shifts and to work at the job for which the pay is highest, provided such employee is qualified for such work. Seniority does not give an employee the right to choose a specific unit, run, trip or load.

When an employee has worked sixteen (16) days in any sixty (60) day period, he shall be placed on the seniority list as of his first day of hire. No employee can have seniority with more than one Employer except as provided in Article 34, Moonlighting. Seniority rights for employees shall prevail. The Union and the Employer shall agree on whether such seniority shall be measured by length of service in the job classification at the terminal or by length of service at the terminal.

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Section 2. Seniority Rank and Posting

(a) Within thirty (30) days after signing of this Agreement, the Employer shall post in a conspicuous place at the Employer's terminal, a list of employees arranged according to their seniority. Claims for corrections to such lists must be made to the Employer within ten (10) days after posting and after such time the lists will be regarded as correct. Any controversy over the seniority standing of any employee on such lists if raised within such ten (10) day period shall be subject to the Grievance Procedure as established by this Agreement.

(b) New employees shall be placed on the regular seniority list, with seniority dating from date of hire, as provided in Article 41, Section 1 of this Agreement.

Section 3. Loss of Seniority

(a) Seniority shall be broken only by:

(1) Failure to respond to a notice of recall as specified in Section 4 of this Article.

(2) Unauthorized leave of absence.

(3) Unauthorized failure to report for work for seven (7) consecutive days when work is available.

(b) Any employee who is absent because of proven illness or injury shall maintain his seniority.

Section 4. Layoff and Recall

(a) When it becomes necessary to reduce the working force, the last man on the seniority list shall be laid off first and when the force is again increased, the men are to be returned to work in the reverse order in which they are laid off.

(b) In the event of a recall, the laid-off employee shall be given notice of recall by telegram, registered or certified mail, sent to the address last given the Employer by the employee. Within three (3) calendar days after tender or delivery at such address of the Employer's notice, the employee must notify the Employer by telegram, registered or certified mail of his intent to return to work and must actually report within seven (7) calendar days after date of tender of delivery of the recall notice, unless it is mutually agreed that the employee need not return to work within seven (7) calendar day period. In the event the employee fails to comply with the above provisions, he shall lose all seniority rights under this Agreement and shall be considered as a voluntary quit.

Section 5. Merger, etc.

The following rules shall govern the exercise of seniority rights by the employees of the Employer and the members of the Local Unions affiliated with Joint Councils No. 73 and No. 16 who have similar provisions in their contracts.

(a) Definition of Seniority:

(1) Company or classification seniority, as used in this Section 5 is defined as the seniority which an employee acquires from his earliest date of hire in the company as a whole either by classification or by over-all seniority whichever previously prevailed.

(2) Terminal seniority is defined as the seniority which an employee acquires from his earliest date of hire at a specific branch, terminal, division or operation of the company.

(3) Within the area of this Supplement, when a branch, terminal, division or operation is closed or partially closed and the work of the branch, terminal, division or operation is transferred to another branch, terminal, division or operation in whole or in part, an employee employed at the closed or partially closed down branch, terminal, division, or operation shall have the right to transfer to the branch, terminal, division or operation into which the work was transferred, and to exercise his seniority on a company or classification basis in the affected terminal, branch, division or operation.

(b) Merger:

When two or more companies merge their operations then the employees of the respective companies shall all be placed on one seniority roster in the order of the earliest date of hire of each of the employees with their respective Employer.

(c) Acquisition or Purchase:

When one company acquires or purchases control of the business of another company then the employees of the company so acquired or purchased shall be placed at the bottom of the acquiring or purchasing company's seniority roster in the order of their payroll or company seniority with the former company. Seniority shall be established as of the date of the filing of the application providing the application is subsequently approved by the ICC.

(d) In any case, whether it is a purchase, merger, consolidation, acquisition, etc., the employees involved shall retain

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their over-all seniority for all fringe benefits.

(e) Regulatory Agencies:

The decision of the Interstate Commerce Commission or state regulatory body shall be considered as presumptive proof as to the nature of the transaction relative to mergers, purchases, acquisitions, and/or other combinations of two or more contract or common carriers. The company or companies involved shall present an affidavit to the Union as to their intent to merge, purchase, etc.

(f) Disputes Procedure:

If a dispute arises concerning the interpretation or application of the foregoing provisions dealing with seniority, then the subject matter of such dispute may be taken up by the aggrieved party with the Joint Area Committee provided for here.

Section 6. House Concerns

Where the Employer acquires or has acquired the work, or trucks of any so-called "House Concern" whose employees are being organized or are already organized, the employees of said concern shall be confined exclusively to the work they performed while in the employ of said concern. Those employees shall hold seniority on the work of said concern as if they were actually employed by said concern, in addition to maintaining a seniority standing on the Employer's seniority list from the day such employees started to work on the Employer's payroll. If, however, there is no work for said employees on the "House Concern's" work, the said employees shall work, in their proper seniority as of the date of

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hire by the Employer on the Employer's work and shall be governed by the terms of this Agreement. Past practices shall prevail as to when "House Concern" employees may exercise their company-earned seniority on jobs other than their "House Concern" job.

Section 7. Seniority shall prevail in selection of starting time so the oldest man in seniority shall have the earliest starting time if he so elects (provided he is qualified). Regular bid shall be for a period of six (6) months, except by mutual agreement between the Union and the Employer.

ARTICLE 45 — Joint Grievance Committees

Section 1. Joint Local Committees

The Employers and the Local Union or Local Unions within each Local Union area or areas shall continue the present Joint Local Committee. The Committee shall consist of an equal number designated by the Employers and the Local Union or Local Unions, but no less than three (3) from each side. The rules of procedure to govern the conduct of its meeting shall continue as presently in effect. The Joint Local Committee shall have jurisdiction over disputes and grievances involving the Employer and the Local Union or Local Unions in accordance with the procedure established in Article 46 of this Agreement. Where no Joint Local Committee presently exists, the same shall be established within sixty (60) days from the signing of this Agreement and the Employers shall submit a list of their panel members. In the event such Committee is not established within the sixty (60) day period, the Local

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Union shall have the right to take all lawful or economic action.

Section 2. Joint Area Committee

The Employers and the Local Unions shall together create a Joint Area Committee. A Joint Area Committee shall consist of an equal number of members and alternates as designated by the Employers and Local Unions, parties to the New Jersey-New York Area General Trucking Agreement, but not less than three (3) from each side. Each member and alternate's name shall be registered with the Secretary of the Joint Area Committee. The Joint Area Committee shall establish the rules of procedure to govern the conduct of its meetings.

The Joint Area Committee, in accordance with the procedures established in Article 46 of this Agreement, shall have jurisdiction over disputes and grievances involving the Employers and Local Unions which cannot be settled by majority vote of the Joint Local Committee. The Joint Area Committee shall review and approve rules of procedure formulated by the Joint Local Committees solely for the purpose of assuring that consistent procedures will be followed and adequate records kept.

Section 3. Eastern Conference Joint Area Committee

The Employers and the Local Unions shall together create a permanent Eastern Conference Joint Area Committee which shall consist of delegates from the Eastern Conference Area. This Eastern Conference Joint Area Committee shall meet at established times and at a mutually convenient location.

The Committee shall also act as final authority, except as otherwise provided

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in Articles 8 and 46 of this Agreement, on all matters involving questions of the meaning or import of any clause or provision of this Agreement, decisions which would have general application to the majority of Employers and Local Unions who are parties to this Agreement.

Section 4. **Contiguous Territory**

If a dispute or grievance arising out of operations under this Agreement involves a Local Union situated in contiguous territory, such dispute or grievance shall be referred to any of the above Joint Committees for handling by the Executive Secretary of the Eastern Conference of Teamsters, and after such reference shall be handled under the usual procedure of the Joint Committee.

Section 5. **Function of Committees**

It shall be the function of the various committees above-referred-to, to settle disputes which cannot be settled between the Employer and the Local Union in accordance with the procedures established in Article 46. All Committees established under this Article may act through subcommittees duly appointed by such Committee.

Section 6. **Attendance**

Meetings of all Committees above-referred-to, must be attended by each member of such Committee or alternate.

Section 7. **Examination of Records**

The Local Union, Joint Local Committee, Joint Area Committee or the Eastern Conference Joint Area Committee shall have the right to examine time sheets and any other records pertaining to the computation of compensation of any individual or individuals whose pay is in

dispute, or records pertaining to a specific grievance.

Section 8. **National Grievance Committee**

Grievances and questions of interpretation which are subject to handling under the provisions of Article 8 of the National Agreement shall be referred to the National Grievance Committee.

Section 9. **Joint Labor Management Committee**

(a) Pursuant to the agreement of the parties signatory to this Agreement to maintain conditions of employment, wages, etc., set forth herein at the highest standard in effect at the time of execution of this Agreement, and to preserve the essence of the Agreement, the Employers and the Local Unions shall together create a Joint Area Competitive Equity Committee and same shall be established for the express purpose of handling cases involving alleged substandard wages, health, welfare and pension contributions, conditions of employment and/or other practices detrimental to the best interest of the trucking industry and the integrity of the Labor Agreement.

(b) The Committee shall consist of an equal number of members and alternates as designated by the New Jersey-New York Employer and Union Negotiating Committee. The Committee shall establish the rules and procedures to govern the conduct of its meetings and shall be funded and staffed as directed by the Union and Employer Negotiating Committees.

(c) All signatory Employers hereby agree to immediately present either upon demand or pursuant to Committee decision

all Company operation, payroll, and health, welfare and pension contribution records requested by the Committee.

(d) All signatory Local Unions hereby agree to immediately present to this Joint Committee, either upon demand, or pursuant to Committee decision, any contracts, wages, hours, or conditions of employment which are applicable to any or all of the operations of any signatory Employer and/or which are competitive with those operations of signatory Employers which are subject to the provisions of the National Master Freight Agreement and/or the New Jersey-New York Supplemental Agreement.

(e) All decisions rendered by such Joint Area Competitive Equity Committee shall be final and binding upon the parties. Deadlocked cases will be submitted to the New Jersey-New York Joint Area Committee and if deadlocked by the New Jersey-New York Joint Area Committee the case will be submitted to the Eastern Conference Joint Area Committee.

(f) In order to maintain competitive equity, upon the complaint of any member of the Joint Area Competitive Equity Committee, Joint Council #16 and/or Joint Council #73, and the Eastern Conference of Teamsters and International Brotherhood of Teamsters, shall immediately present, and jointly review with the Committee the contracts, wages, health, welfare and pension contributions and conditions of employment negotiated or applied by the Unions not signatory to the National Master Freight Agreement and/or the New Jersey-New York Supplemental Agreement, and which are or may be competitive with those operations

of signatory Employers which are subject to the provisions of the National Master Freight Agreement and/or New Jersey-New York Supplemental Agreement.

Following the review of said complaint and if such complaint is substantiated it is agreed that Joint Council #16 and/or Joint Council #73, and the Eastern Conference of Teamsters and International Brotherhood of Teamsters will take any and all actions that may be necessary and proper.

Section 10. **Moving Expenses**

Where any employee is required, through no fault of his own, to change residence in order to follow employment as a result of an approved change of operations, the Employer shall move the employee or pay his moving expenses. This shall not apply to moves within a 50 mile radius. The Employer shall not be responsible for moving or moving expenses if employee changes his residence as a result of voluntary transfer. Moving costs shall include packing costs on redomicile and insurance against losses.

ARTICLE 46 — Grievance Procedure and Union Liability

Section 1.

The Union and the Employer agree that there shall be no strike, lock-out, tie-up, work stoppage, or legal proceedings without first using all possible means of a settlement, as provided for in this Agreement, of any controversy which might arise. Disputes shall first be taken up between the Employer and the Union involved. All grievances must be made

known to the other party within five (5) days, excluding Saturdays, Sundays, and holidays, after the reason for such grievance has occurred. The five (5) day requirement does not apply to grievances involving wages, seniority and fringe benefits after the Union has secured knowledge of the grievance. In the event that the Employer and the Union involved are unable to adjust the matter, the dispute shall, within two (2) days, excluding Saturdays, Sundays and holidays, after the request of either party, be reduced to writing and referred to the Joint Local Committee and the following procedures shall then apply:

(a) Where a dispute concerns a matter of discharge the Employer and the Union shall submit the matter to final and binding arbitration. In cases of voluntary or involuntary quit, such dispute(s) may be submitted to the Joint Local Committee for decision. In the event of a case involving a voluntary or involuntary quit is deadlocked by the Joint Local Committee, such case must then be referred to arbitration as set forth below in this Article. Such arbitration shall be selected through the following procedures:

The New Jersey State Mediation Service in cases involving Locals 469, 478, 560, 617, 641, 660 and 701.

The New York City Trucking Arbitration Authority in cases involving Locals 282 and 807. Hugh E. Sheridan to arbitrate cases involving Local 816. Herman Gray to arbitrate cases involving Local 240.

In cases involving Local 707 and 814, either the American Arbitration Association or by mutual agreement a staff Arbitrator of the New York State Board

of Mediation or the New York State Board of Mediation. The choice of the arbitration agency shall be made by the Union; and the Employer agrees to abide by the choice made by the Union.

In cases involving Local 445, the matter shall be submitted to the Joint Local Committee for determination. In the event the Joint Local Committee deadlocks, the dispute is then referred to final and binding arbitration. Such arbitrator shall be selected by mutual agreement between the Chairman of the Union panel and the Chairman of the management panel. If the chairmen cannot agree, then the matter shall be submitted to the New York State Mediation Service for disposition.

Within fourteen (14) days of conclusions of the arbitrator's hearing, the arbitrator shall mail, by registered mail, to all parties involved, a copy of his decision or award. Failure of any party involved to comply with such decision or award within ten (10) days thereafter, will remove restrictions against any legal or economic recourse by the other party as prohibited by Section 1 of this Article, notwithstanding any action taken to set aside, confirm, modify, or enforce such decision or award, until such time as the award is actually vacated, it being the intention of the parties that decisions and awards rendered pursuant to the procedures set forth in this Article be complied with immediately regardless of any legal proceedings. If, however, the Employer and Union agree that a dispute relative to discharge be submitted to the Joint Local Committee the majority decision of that Committee will be final and binding on all parties. In the event such Joint Local

Committee is deadlocked, the matter shall be submitted to final and binding arbitration by the Joint Local Committee as set forth above.

All time lost by the employees engaged in economic action because of an Employer's failure to abide by a decision made pursuant to this Article shall be reimbursed by the Employer, provided that if there is a dispute as to the amount of reimbursement, such dispute must be resubmitted to the Arbitrator or the appropriate Joint Committee.

(b)(1) Where a Joint Local Committee, by majority vote, settles a dispute, no appeal may be taken to the Joint Area Committee. Such decision shall be final and binding on the Local Union, the Employer and any employee(s) involved. Matters of interpretation of this Agreement, as defined in Article 45 of this Agreement, shall be referred to the Joint Area Committee for final decision at the request of any party.

(2) In the case of Local 701, all wages, hours and conditions of employment and all established local past practices in the Agreement expiring on October 31, 1967, which are better than the conditions set forth in the National Master Freight Agreement and the New Jersey-New York Supplement thereto shall be maintained and set forth in the Rider of the Local Union. Any grievance or dispute concerning the aforementioned matters shall be adjusted or processed in accordance with the grievance and arbitration procedure set forth in the Local 701 Agreement which expired October 31, 1967.

All other disputes and grievances shall be processed in accordance with the provisions of the National Master Freight Agreement and New Jersey-New York Supplement except that deadlocked cases before the Joint Local Committee or if there is no such Committee where the parties are unable to resolve a grievance shall go directly to the Eastern Conference Joint Area Committee for decision.

(c) Where a Joint Local Committee is unable to agree or come to a decision on a case, the dispute shall be promptly submitted to the Joint Area Committee. By mutual agreement the parties may waive the Joint Area Committee step and submit any case deadlocked by the Joint Local Committee to the Eastern Conference Joint Area Committee. Such cases as are referred shall include the minutes of the Joint Local Committee's proceedings on the case. Such minutes shall set forth the positions and facts relied on by each party, but each party may appear and present evidence at the hearing before the Joint Area Committee or the Eastern Conference Joint Area Committee.

(d) Where the Joint Area Committee, by a majority vote, settles a dispute, no appeal may be taken to the Eastern Conference Joint Area Committee. Such decision shall be final and binding on both parties with no further appeal.

(e) Decision shall be issued on cases submitted to the Joint Area Committee within fourteen (14) days after such submission, unless otherwise mutually agreed.

(f) Where the Joint Area Committee is unable to agree or come to a decision on

a case, it shall, at the request of the Union or the Employer involved, be appealed to the Eastern Conference Joint Area Committee at the next regularly constituted session. Where any Committee established under this provision, by majority vote, settles a dispute such decision shall be final and binding on both parties and the employee(s) involved, with no further appeal.

(g) It is agreed that all matters pertaining to the interpretation of any provision of this Supplement, as defined in Article 45, of this Supplement, shall be referred at the request of the Local Union or Employer at any time to the Joint Area Committee for decision.

It is agreed that all matters pertaining to the interpretation of any provision of this Agreement not settled by the Joint Area Committee, may be referred by the Joint Area Secretary for the Unions or the Joint Area Secretary for the Employers at the request of either the Employers or the Unions, parties to the issue, with notice to the other Joint Area Secretary, to the Eastern Conference Joint Area Committee at any time for final decision.

It is further agreed that all decisions of Joint Local Committees on matters pertaining to the interpretation of this Agreement, as defined in Article 45, of this Agreement, shall automatically be reviewed by the Joint Area Committee and that any decision of the Joint Local Committee may be reviewed by the Joint Area Committee on its own initiative at any time if any member thereof has reason to believe such decision could be or is being construed as interpretation of contract as defined in this Agreement. 113

The sole purpose of this paragraph is to assure clear and uniform understanding of the meaning of all provisions of this Agreement by all parties hereto. The Joint Area Committee shall inform all parties to this Agreement of any decision involving interpretation of this Agreement.

(h) Deadlocked cases may be submitted to umpire handling if a majority of the Eastern Conference Joint Area Committee determines to submit such matters to an umpire for decision. Otherwise, either party shall be permitted all legal or economic recourse.

(i) Failure of any Joint Committee to meet without fault of the complaining side, refusal of either party to submit to or appear at the grievance procedure at any stage, or failure to comply with any final decision, withdraws the benefits of Article 4 and 46.

(j) In the event of strikes or work stoppages or other activities which are permitted in case of deadlock, default, or failure to comply with the majority decisions, no interpretation of the Agreement by any tribunal shall be binding upon the Union or affect the legality or lawfulness of the strike unless the Union stipulates to be bound by such interpretation, it being the intention of the parties to resolve all questions of interpretation by mutual agreement. Where a strike is in violation of this Agreement or any law including but not limited to, violations of Sections 301 or 303 of the National Labor Relations Act, all issues of liability shall be resolved pursuant to the grievance procedure. 114

(k) The procedures set forth herein may be invoked only by the Union's authorized representative or the Employer.

(l) The decisions of the Joint Local Committees, Joint Area Committee, the Eastern Conference Joint Area Committee and the arbitrators appointed in accordance with the procedures set forth herein shall be final and binding on all parties involved, and employee(s) affected. Such Committees or arbitrators shall not be empowered to add to or subtract from this Agreement or render any decision in conflict with the Agreement or which modifies this Agreement in any way. Such Committees or arbitrators may, in cases involving disciplinary action including discharge, suspension or disciplinary action as they may deem just and equitable.

Section 2. **Interpretation of Grievance Procedures** Questions or disputes concerning the interpretation application or enforcement of the grievance procedures provided in this Agreement shall themselves be deemed arbitrable before the Joint Local Committees subject to the appeals procedures set forth in this Article.

Section 3. **Time for Taking Appeals** All appeals permitted to be taken in accordance with the procedures set forth in this Article must be taken within fourteen (14) days from the date of receipt of the decision or award.

Section 4. It is agreed and understood that, in all cases of an unauthorized strike, walk-out, or any other unauthorized cessation of work in violation of this Agreement, the Union shall not be liable for damages resulting from such unauthorized acts of its members, while the Union shall undertake every reasonable means to induce such 115

employees to return to their jobs during any such period of unauthorized stoppage of work.

It is specifically understood and agreed that the Employer, during the first twenty-four (24) hour period of such unauthorized work stoppage, shall have the sole and complete right of reasonable discipline, short of discharge; and such employees shall not be entitled to have any recourse to any other provisions of this Agreement.

ARTICLE 47 — Discharge or Suspension

Section 1. **Warning Notice** The Employer shall not discharge nor suspend any employee without just cause and the written notice of discharge or suspension must set forth the specific reason(s) for such action. In respect to discharge or suspension, the Employer shall give at least one warning notice of the specific complaint against such employee, in writing, and a copy of the same to the Union and the shop steward, except that no warning notice need be given to any employee before he is discharged or suspended if he is discharged or suspended for any of the causes listed in Section 2 below or suspended for theft of time. The Employer shall not discipline any employee without just cause based upon valid written warning notices sent within the applicable time periods set forth hereinafter. No disciplinary notice shall be considered valid unless it is in writing, has been delivered to the employee, personally or by certified mail to the address given to the Employer by the employee or his job steward and sent certified mail to the Union, and sets forth 116

therein in full the specific grounds and circumstances upon which it is based. Warning notices only, shall be handed to the employee and not mailed to his home. No warning letter or letter of suspension shall be considered valid unless issued by the Employer within seven (7) days, excluding Saturdays, Sundays, and holidays, from the date the Employer knew of or reasonably should have become aware of the specific grounds and circumstances upon which it is based.

No disciplinary notice may be introduced in any grievance or arbitration hearing which has not been issued within six (6) months from the date of the disciplinary notice, except in the case of notices concerning accidents, within nine (9) months from the date of the disciplinary notice. Failure of an employee or Union to grieve or protest a warning letter to which no other discipline has been attached, when given, shall in no manner be deemed prejudicial to said employee in a future grievance or arbitration hearing involving said warning letter.

An employee shall not be suspended until the Local Union has been given forty-eight (48) hours written notice. Saturdays, Sundays, and Holidays shall be excluded in determining the forty-eight (48) hour period.

Section 2. Causes for Discharge

The only causes for immediate discharge of an employee shall be for proven theft of money, goods, or merchandise during working hours, proven drunkenness, or proof of being under the influence of liquor or drugs during working hours, calling an unauthorized strike or walkout, assault on Employer or his representative during working hours, failure to report

an accident which the employee would normally be aware of, proven recklessness resulting in a serious accident while on duty, or the carrying of unauthorized passengers in the cab of a truck while on duty, engaging in unauthorized transportation of merchandise or goods for personal gain during working hours. Although theft of time shall not be cause for immediate discharge, it is recognized as an offense for which severe disciplinary measures may be invoked. When an employee is discharged, the Employer shall notify the Union in writing.

Section 3. Appeal from Discharge or Suspension

A discharged employee must notify his Local Union in writing within two (2) working days of his desire to appeal the discharge or suspension.

Notice of appeal from discharge or suspension must be made to the Employer in writing by the Union within five (5) days from date of discharge or suspension. If the Employer and Union are unable to agree as to a settlement of the case, then it may be appealed to the grievance machinery as set forth in Article 46.

Section 4. Separation of Employment

In accordance with Article 23 of the National Master Freight Agreement, earned vacation time shall be included in such payment.

ARTICLE 48 — Bonds

Failure of employees on the Employer's payroll as of the effective date of this Agreement to meet the qualifications for bonding shall not be grounds for dismissal.

ARTICLE 49 — Pay Period

All regular employees covered by this Agreement shall be paid in full each week. Not more than one week's pay shall be held on an employee. The Employer agrees to pay additional or extra men at the completion of their work whenever it is possible to do so or will mail a check within twenty-four (24) hours to the employee at the address designated by the employee.

When the regular pay day occurs on a holiday, the Employer shall pay the employees on the regular work day immediately preceding the holiday. The Employer shall pay in cash or make suitable arrangements to cash checks on pay day. Each employee shall be provided with a statement of gross earnings and an itemized statement of all deductions made for any purpose.

With regard to pay shortages, the Company will take prompt, corrective action after notification and pay such shortage to the employee no later than the next pay period.

ARTICLE 50 — Job Duties and Classifications

Section 1. An employee in one job classification may be used in another job classification only if no work opportunities are lost by those on the seniority list in the job classification to which he is transferred.

(a) Drivers

A driver is one who drives motorized equipment in the delivery and/or pickup

of freight or in the moving of equipment. Drivers may make pickups and/or deliveries of freight to and from the ground, sidewalk, platform, connecting line and/or within the premises of the consignee or shipper.

There shall be no "feeding" of trucks or trailers to drivers at or near pickup and/or delivery places. A driver may be required to stack freight in the body of the truck or trailer and may be required to take freight to the tailgate of the truck or trailer in unloading at the Employer's terminal.

Where drivers and helpers have not previously worked on the platform at the Employer's termnial, the performance of platform work will be subject to mutual agreement between the Local Union and the Employer.

(b) Helpers

A helper may assist a driver in performing the pickup and/or deliveries the driver is called upon to make. Helpers may be required to load or unload the vehicle at the Employer's terminal.

(c) Platform Men

Platform men shall move, load and/or unload freight and perform other duties in accordance with past practice.

(d) Checkers

Checkers' duties shall consist of the checking of freight at the Employer's place of business. Checkers may be required to perform platform men's duties.

(e) Hi-Lo Men

A Hi-Lo man operates a motorized lift truck. He may be required to perform platform men's and/or checking duties as assigned.

(f) Warehousemen

A warehouseman's duties shall consist of the handling of all freight in the warehouse of the Employer, including the loadi[illegible]nd unloading of freight.

(g) Classification pertaining to platform work shall be the gang or utility system: (1) The Gang System. Comprised of checker, stacker, pusher or stripper. Checker to perform no other duty than check. (2) Utility System. Defined as "one man" gang, who may check, push stack or strip simultaneously. The Utility System, when used, the man will be paid seven cents (7¢) an hour above the regular platform rate. The utility rate shall also apply to hi-lo men, when performing the above work.

(h) Riggers

Rigging work covered by this Agreement shall be work obtained by the Employer on the basis of the Rigging Tariffs (Heavy Hauling). All employees assigned to rigging work shall be paid the wages shown in Article 51, Section 1 of this Agreement.

(i) All moving of trucks, tractors and trailers in and about the Employer's place of business shall be performed by drivers, in the employ of the Employer, who are governed by this Agreement, except that:

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(1) An over-the-road driver shall have the right to back into the terminal platform so that his truck or trailer may be unloaded or reloaded. He shall have a similar right to drive away from the Employer's platform on his return trip to drop and/or pickup a trailer or truck at the Employer's terminal unless the terminal is closed.

(2) If, at the time of arrival, due to congestion at the platform, or for other reasons, the road driver does not back his truck into the platform, but leaves it in the yard, street, or nearby lot, then going on about his business, the truck or trailer unit shall be considered as having "come-to-rest."

(3) Once the over-the-road unit has "come-to-rest," in the terminal area, all further moving about of the truck or trailer shall be deemed local work to be performed by a local driver.

Section 2. The movement of trailers to and from the Employer's terminal shall be performed by city drivers working under this Agreement.

Nothing in this Agreement shall prevent the Employer from leaving unattended trailers at the place of business of shipper or consignee providing it is not for the purpose of avoiding the following:

1. Dropping of trailer to avoid the paying of a lunch hour.

2. Dropping of trailers to avoid premium day pay.

3. Dropping of trailers where loading or unloading is not performed by regular employees of the Employer at whose place of business the trailer is dropped.

4. Dropping of trailers where it is in conflict with the first paragraph of this Section.

Maintenance of Standards provision shall apply to all past practices and conditions prevailing in each Local Union under this provision.

During the term of this Agreement, the Employer shall not directly, or indirectly, through himself, or itself, or through any other firm, corporation, partnership or other entity, operate, maintain or conduct any establishment or place of business for the purpose of evading, or which actually evades any of the terms of this Agreement.

Any dispute shall be referred to the grievance machinery.

Section 3. When an Employer maintains a terminal or loading dock for the purpose of loading, unloading or sorting, or checking and stripping of freight to be loaded from a "piggy-back" "fishy-back," "birdie-back," or other freight container destined to or from another carrier for movement via "piggy-back," "fishy-back," "birdie-back," or similar type operation, such loading, unloading and sorting, checking and stripping, shall be considered local work and shall be performed by employees employed under this Agreement. The provisions of this paragraph shall not apply to bona fide operations conducted by a regulated freight forwarder for forwarding via railroad, or other conveyance.

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ARTICLE 51 — Wages

Section 1. The job classifications and wage rates for each Local Union are set forth in Appendix A and by reference hereto made a part of this Agreement. The minimum wage increase across the board shall apply to all present employees in the classifications set forth in Appendix A. New employees and present employees changing classifications shall receive the rate set forth in Appendix A.

Any chauffeur driving windlass trucks shall receive one dollar ($1.00) per day over the wage scale listed above when using windlass.

All employees covered by this Agreement assigned to night work shall receive one dollar ($1.00) per day over the wage scale listed above. The one dollar shall be added to the wage scale in computing overtime and vacation pay.

Rigging work

Truck drivers and helpers shall receive the same modulated increase as above in their respective classifications. Where a Local Union has an industry-wide Rigging Agreement which has in the past been subject to separate negotiations, the same shall continue to be subject to separate negotiations and the Employers party hereto agree to be bound by such negotiations on any rigging work which they perform. The Employers agree to respect and abide by the jurisdictional rules and determinations of the Union concerning rigging work.

Section 2. No night work shall start before 4:00 p.m.

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Section 3. Any employee required to appear in court at the request of the Employer or at the summons of the National Labor Relations Board and the New Jersey State Mediation Board or the New York State Labor Relations Board as a result of some action taken on behalf of the Employer shall be paid in full for lost time by the Employer. No payment shall be less than a full day's pay, but the employee shall be available for work if the proceedings do not extend the full day. When an employee is required to appear in court for the purpose of testifying because of an accident he may have been involved in during working hours, such employee shall be reimbursed in full for all time lost unless the employee is proven to have been under the influence of intoxicating liquor or narcotics.

Section 4. Bereavement Leave

In case of a death in an employee's immediate family (i.e., spouse, mother, father, sister, brother, children, mother-in-law, father-in-law), the Employer shall grant such employee a maximum of three (3) days off with pay for the express purpose of attending services for the deceased. Death certificate or other satisfactory proof of death must be submitted to the Employer. The employee must be on the seniority list for at least six (6) months. Two (2) days guaranteed regardless of day of funeral.

ARTICLE 52 — Workday and Workweek

Section 1. Regular Workday and Workweek

(a) Eight (8) consecutive hours, exclusive of a meal period as specified in Article 53 of this Agreement shall constitute a regular day's work, Monday to Friday, inclusive.

(b) Employees assigned to work each day, Monday to Friday inclusive shall be guaranteed a minimum of eight (8) hours of work or pay.

(c) Wherever used throughout this Agreement, a "day's pay" or "a regular day's pay" shall be understood to mean pay equivalent to eight (8) hours at the employee's regular straight time hourly rate, according to his wage classification, except as may otherwise be specifically provided in this Agreement.

Section 2. Overtime and Sunday and Holiday Pay

(a) Overtime—Monday to Friday and Saturdays.

(1) All hours worked in excess of eight (8) hours per day, Monday to Friday inclusive, shall be paid for at the rate of time and one-half.

(2) Employees who begin work on Saturday shall be paid at the rate of time and one-half the straight time hourly rate until relieved from duty, with a minimum of five (5) hours, twenty (20) minutes work or pay. In operations where employees receive a greater guarantee, Article 6, Maintenance of Standards shall apply.

(b) Sunday and Holiday Pay.

(1) All hours worked on Sunday shall be paid for at the rate of double straight time, with a minimum guarantee of eight (8) hours work or pay. All hours worked in excess of eight (8) hours on a Sunday shall be paid for at the rate of three times the straight time hourly rate.

(2) All hours worked on any of the holidays listed in Article 57 of this Agreement (except such holidays as fall on Saturday) shall be paid for at the rate of double straight time, with a minimum guarantee of eight (8) hours work or pay. All hours worked in excess of eight (8) on any such holiday shall be paid at the rate of three times the straight time hourly rate. Senior employees may refuse to work on a holiday, however, all jobs must be covered by junior men on the seniority list.

(3) Employees who are assigned to work on an evening prior to a holiday, and whose work ends on a holiday, shall work the hours necessary to complete that day's work at the regular rate of that day, and the regular overtime rate shall be paid thereafter until the regular starting time of the next day, at which time the holiday overtime hourly rate shall apply until he completes his work.

(4) Employees assigned to work on a Sunday evening, or the evening of a holiday (except where the holiday falls on Saturday in which case paragraph (5) shall apply) and whose work ends on the following day, shall be paid at the Sunday or holiday rate until 12:00 midnight, at which time the regular hourly rate of pay shall apply until he has completed eight (8) hours of work. For all work in excess of eight (8) hours, the regular overtime rate shall apply. If such employees work more than eight (8) hours, they shall be paid at the overtime rate applicable for that day. Maintenance of standards shall apply.

(5) All hours worked on Saturday that is a holiday shall be paid at the rate of time and one-half straight time, plus the holiday pay, with a minimum guarantee of five (5) hours and twenty (20) minutes work or pay. Hours worked in excess of eight (8) on such holiday Saturday shall be paid for at the rate of three (3) times the straight time hourly rate.

Section 3. Starting Time

(a) A regular day's work may be assigned at 7. a.m. to 8 a.m., starting time to be computed from the time of the employee's arrival at the Employer's terminal until leaving the same. (Premium days included.)

(b) If an employee is required to report for work before 7 a.m., he shall be paid for such period at the overtime rate applicable for that day. Where an employee is required to report for work at 8 a.m., or any time thereafter, until 4 p.m., the starting time shall be as of 8 a.m., and the employee shall be paid a full day's pay.

(c) Any employee ordered to work after the regular starting time shall have his time revert back to his regular starting time. No change of such starting times shall be made by the Employer unless approved by the Union. In the event the Union and the Employer are unable to agree on the change of starting time, the issue may be submitted to the grievance procedure.

(d) LATE REPORT: Employees late for assignments shall be placed at the bottom of the seniority list for that day.

Section 4. Each employee shall "punch in" his own time card at the start of the day, and "punch out" his own time card at the completion of the day's work.

In the event that any employee is ordered to report at, or leave his vehicle at, a different place than his usual starting point, such employee shall be paid transportation expenses. Each employee shall begin and end his workday at his Employer's place of business to which he is regularly assigned or shall be paid for the time it takes to travel to and/or from such location.

Section 5. Relief from Duties

Once a man has completed a day's work or a night's work, he shall be relieved from duty for a period of at least eight (8) hours, before he may be given a new assignment except in the case of an Act of God, or in the case of Locals 282 and 807 where the Employer is unable to secure a replacement and the Union is unable to supply a replacement. His right to work the next day or night, however, shall in no way be impaired. He must be put to work and, regardless of whatever time it is he starts after his minimum eight (8) hours of relief except as stated above. However, his time shall be computed from 8:00 a.m., if he works on a day shift and from the time he normally works if he works on the night shift.

Maintenance of Standards shall apply to Local 816.

ARTICLE 53 — Meal Period

Section 1. Length

One (1) hour (sixty (60) consecutive minutes) shall constitute the full meal period for all employees, except by mutual consent of the Union and the Em-

ployer, a lesser time for men on "rigging work" and platform workers on night work, may be arranged.

Section 2. Time

The lunch hour shall not start before the fourth (4th) hour of work, to be completed by the sixth (6th) hour of work. On night work the dinner hour shall be taken between the fourth (4th) and completed by the sixth (6th) hour of work. No employee shall take less than one (1) hour for lunch unless mutually agreed upon by the Union and the Employer.

Section 3. Work During Meal Period

Any employee who is ordered to work during any part of his assigned meal period shall be paid for the full meal period at the applicable overtime rate and shall further receive twenty (20) minutes to eat lunch, such twenty (20) minutes being credited as time worked.

Section 4.

When a driver or driver-helper combination is or are taking his or their lunch period, no one will load and/or unload any freight on his or their truck during this period except at the home terminal or House Concern.

Section 5. Coffee Breaks

It is understood the principle of a coffee break conforms with past practices in the industry. The coffee break will conform with Employer's rules and regulations. It is also understood that employees must not abuse this privilege.

ARTICLE 54 — Leased or Hired Equipment (Owner-Operators)

Section 1.

For the purpose of protecting the established drivers' rate, minimum rental rates for the leasing of equipment owned by

employee shall be determined by negotiations between the parties, in each locality, for the equipment used in that locality, subject to approval by the Joint Local and Joint Area Committees.

The minimum requirement rental rate shall produce the minimum cost of operating the equipment but in no event shall be less than seven dollars ($7.00) per hour. The equipment rental rate is in addition to the full drivers' wages and allowances including guarantees, health, welfare and pension contributions, vacation benefits, holidays and other fringe benefits.

The maximum number of local cartage owner-drivers which any Employer is permitted to utilize at each of its terminals within the area of this Agreement shall never exceed 5% of the total number of driver employees of said Employer at each terminal. As an owner-operator leaves the employ of an Employer under this Agreement the Employer shall replace the equipment of the owner-driver with company-owned equipment.

Section 2.

In the event the Company leases equipment from individual owners, then in that event the Company shall pay the driver directly and separately from the lessor of said equipment.

Section 3.

The Employer expressly reserves the right to control the manner, means and details of, and by which, the owner-operator performs his services, as well as the ends to be accomplished.

Section 4.

Owner-drivers shall not be used until all available and appropriate equipment of the Employer is working. Whenever any

owner-driver is engaged the Employer must, in compensating such owner-driver separate the payment for truck rental from the wages paid to him for personal services, so that the sum of money paid him for personal services is not less than what would be received by such owner-driver as wages in accordance with the wage rates set forth in Appendix A of this Agreement, as an employee of the Employer. Employer's time and pay records, relating to owner-drivers, shall be open for the inspection of Union representatives. Owner-drivers shall be covered by all provisions and receive all benefits provided for in this Agreement including, but not limited to, wages, health and welfare, pension, holidays, vacations and starting time and shall "punch-in" "punch-out" their own time cards at the Employer's terminal(s) or garage(s) and as provided in Article 52.

Section 5.

The Employer shall maintain at each terminal a list of said owner-operators which shall include their seniority date.

Section 6.

(a) All certificated or permitted carriers, hiring or leasing equipment owned and driven by the owner-driver shall file a true copy of the lease agreement covering the owner-driven equipment with the Joint Area Committee. The terms of the lease shall cover only the equipment owned and driven by the owner-driver and shall be in complete accord with the minimum rates and conditions provided herein plus the full wage rate and supplementary allowances for drivers as embodied elsewhere in this Agreement.

(b) The minimum rate for leased equipment owned and driven by the owner-driver shall be:

Single axle tractor only

July 1, 1973	15.50¢ per mile
July 1, 1974	16.00¢ per mile
July 1, 1975	16.5[illegible] per mile

Tandem axle tractor only

July 1, 1973	16.00¢ per mile
July 1, 1974	16.50¢ per mile
July 1, 1975	17.00¢ per mile

Single axle trailer and 35 to 40 foot tandem trailer only (With $8.00 minimum daily guarantee)

July 1, 1973	5.25¢ per mile
July 1, 1975	5.5¢ per mile

Tandem axle, 40 foot or over, trailer only (With $10.00 minimum daily guarantee)

July 1, 1973	6.25¢ per mile
July 1, 1975	6.5¢ per mile

Minimum daily guarantee for trailers does not apply to Saturday, Sunday, or holidays. It applies to either the first day or last day of use, but not both. The above rates also apply to deadheading.

The above rates are based on twenty-three thousand (23,000) pounds load limit for single axle tractors and twenty-seven thousand (27,000) pounds load limit for tandem axle tractors.

On load limits over twenty-three thousand (23,000) pounds, there shall be ½¢ additional per mile for each one thousand (1,000) pounds or fraction thereof in excess of twenty-three thousand (23,000) pounds.

There shall be a minimum guarantee of twenty-five thousand (25,000) pounds for

leased single axle tractors and twenty-seven thousand (27,000) pounds for leased tandem axle tractors owned and driven by the owner-driver. During the first year of a lease, there shall be a minimum guarantee of $100 a month for rental of single axle tractors unless the lease is terminated by mutual agreement or for just cause (which does not include layoff). There shall be an offset against such minimum monthly guarantee to the extent that rental income exceeds the minimum mileage rental revenue provided herein, and to the extent of other for-hire rental revenue during periods of layoff. The carrier may, at its option, provide a minimum guarantee of twenty-six thousand (26,000) pounds for single axle tractors in lieu of the minimum monthly guarantee provided herein.

Nothing herein shall apply to leased equipment not owned by the driver. The minimum rates set forth above result from the joint determination of the parties that such rates represent only the actual cost of operating such equipment. The parties have not attempted to negotiate a profit for the owner-driver.

ARTICLE 55 — Travel Time and Expenses

Any employee working under this contract who is required to spend the night away from home shall be paid for all hours he works and shall, in addition, be compensated for all authorized expenses while away from home.

ARTICLE 56 — Vacations

Section 1. Qualifying Period

The qualifying period for the 1974 vacation shall be April 1, 1973 to March 31, 1974. The qualifying period for the 1975 vacation shall be April 1, 1974 to March 31, 1975. The qualifying period for the 1976 vacation shall be April 1, 1975 to March 31, 1976.

Section 2. Time Credited

In determining vacation entitlements, all calendar days paid for, including but not limited to paid holidays, and paid vacation days, as set forth below shall be counted as days worked, as well as all days lost by an employee while receiving benefits under Workmen's Compensation, if he otherwise would have had work opportunity with his Employer. In no case, however, shall an employee be entitled to vacation unless he works at least thirty (30) days in the qualifying period. If during any week an employee is unable to work a full week because of Federal or State regulations, he shall be credited with a full week's work.

For vacation eligibility purposes paid vacation days shall be considered as days worked according to the following schedule.

Employees who have celebrated their third anniversary by September 30—up to and including five days;

Employees who have celebrated their tenth anniversary by September 30—up to and including ten days;

Employees who have celebrated their fifteenth anniversary by September 30—up to and including fifteen days.

Seniority retained in the event of a transfer, merger, acquisition, purchase or sale, pursuant to Article 1, Section 3, or Article 5, Section 6, shall be computed in determining years of seniority for the purpose of Section 3 below.

Section 3. All employees covered by this Agreement shall receive vacation each year, according to the following schedule:

30 days	1 day
60 days	2 days
90 days	3 days
120 days	4 days
125 days	5 days
135 days	6 days
145 days	7 days
155 days	8 days
175 days	10 days
187 days	11 days
199 days	12 days
211 days	13 days
223 days	14 days
235 days	15 days

All employees with fifteen (15) years or more of seniority shall receive an additional week's vacation with pay at the rate paid for other vacation weeks. The anniversary date for the additional week's vacation shall be September 30th.

All employees with twenty (20) years or more of seniority shall receive an additional week's vacation with pay at the rate paid for other vacation weeks. The anniversary date for the additional week's vacation shall be September 30th.

Where there is a greater vacation schedule in effect at present than set forth above in this Section, such schedule shall continue.

An additional hour's pay shall be given to each employee for each credited day of vacation earned, up to a maximum:

Effective July 1, 1973
one year—five hours
two years—ten hours
ten years—fifteen hours
fifteen years—twenty hours

Effective July 1, 1974
one year—five hours
two years—ten hours
ten years—fifteen hours
fifteen years—twenty hours

Effective July 1, 1975
one year—five hours
two years—ten hours
ten years—fifteen hours
fifteen years—twenty hours

The anniversary date determining the years of service shall be September 30.

Section 4. Vacation Pay

(a) The pay of all employees shall be computed on the basis of wage classification in which the employee was paid for the majority of days during the qualifying period. All wage differentials shall be included in computing vacation pay.

(b) Vacation pay shall be paid in advance at the effective rate of pay prevailing when vacation is taken.

(c) If any of the holidays named in Article 57 of this Agreement occurs during an employee's vacation period, he shall have the choice of an extra day's vacation with pay, or an additional days' pay in lieu of the holiday.

(d) In case of death of an employee who is eligible for a vacation, vacation pay

due such an employee shall be paid to the employee's estate.

(e) The Employer shall not make unavailable to an employee in selecting his vacation, any week within which a holiday falls during the vacation period.

Section 5. Vacation Period

(a) The period beginning April 15 and ending October 15, shall constitute the regular vacation period. Vacations may be taken before or after the regular vacation period by mutual agreement between the Employer and the employee.

(b) The vacation period of each qualified employee shall be set with due regard to the desire, seniority and preference of the employees consistent with the efficient operation of the Employer's business. Preference as to vacation period shall be given to the senior men.

(c) All vacations earned must be taken by the employees, and no employee shall be entitled to vacation pay in lieu of vacation, unless by mutual agreement of the Union and the Employer. Vacations may be taken outside of the regular vacation period provided, however, the Employer may not exclude weeks in which a holiday(s) falls.

Section 6. Posting of Schedule

The Employer shall post the vacation schedule no later than April 1st of each year.

ARTICLE 57 — Holidays

Section 1. Recognized Holidays

The following shall be recognized as paid holidays under this Agreement: New Year's Day, Lincoln's Birthday, Washington's Birthday, Good Friday, Decoration Day, Independence Day, Labor Day, Columbus Day, Election Day, Armistice (Veterans) Day, Thanksgiving Day, Christmas Day, and any holiday called for by State law or proclamation. Effective during the third year of this Agreement, one (1) holiday shall be added.

Section 2. Pay if Not Worked

(a) Any employee covered by this Agreement with one year or more seniority who was not ordered for work on a holiday shall nevertheless be guaranteed the above holidays provided such employee makes himself available for work a minimum of three (3) days during the calendar week in which the holiday occurs.

(b) Any employee covered by this Agreement with less than one year seniority who works three (3) days in any calendar week during which one of the above listed holidays occur, but who was not ordered to work on the holiday shall nevertheless receive one (1) day's pay for the holiday.

(c) These provisions shall also apply if a holiday falls on a Saturday. If during any holiday week an employee is unable to work a day because of federal or state regulations, he shall be credited with one (1) full day.

Section 3. Pay if Worked

All provisions of Article 52, Section 2(b) of this Agreement, with respect to holiday pay shall apply to work performed on any of the recognized holidays.

Section 4. Holidays Occurring on Sunday

When any of the recognized holidays occur on Sunday, and are celebrated any day before or after the holiday Sunday, such days shall be considered as the holiday and paid for as such.

ARTICLE 58 — Health, Welfare & Pension

Section 1.

The Employer hereby agrees to contribute to the appropriate health, welfare and pension funds for those Local Unions in the Jurisdiction of Teamsters Joint Council No. 16 and Teamsters Joint Council No. 73, the following amount per hour in accordance with the provisions outlined in Schedule "B" attached to this Agreement and by reference made a part thereto:

Effective 7/1/73	$1.15
Effective 7/1/74	$1.27½
Effective 7/1/75	$1.40

In the jurisdiction of Local Unions 478 and 701, the Employer hereby agrees to increase the contributions to the appropriate Local Union health, welfare and pension funds in the following amount per hour in accordance with the provisions outlined in Schedule "B" and by reference made a part thereto:

Effective 7/1/73	15¢
Effective 7/1/74	12½¢
Effective 7/1/75	12½¢

Section 2.

In the event of a delinquency in payment the Employer agrees to abide by all rules and regulations established by the Trustees of such funds, including but not

limited to those requiring the payment of interest not exceeding 10% of the delinquency and counsel fees and other costs of collection of such delinquencies, and to give security in sufficient amount as demanded by the Trustees to secure payment of such delinquencies.

Notwithstanding anything herein contained, it is agreed that in the event any Employer is delinquent at the end of a period in the payment of his contributions to the health and welfare or pension fund or funds created under this contract, in accordance with the rules and regulations of the Trustees of such funds, the employees of their representatives, after the proper official of the Local Union shall have given seventy-two (72) hours' notice to the Employer except where no notice is required in accordance with past practice of such delinquency in health and welfare and pension payments, shall have the right to take such action as they deem necessary, including the right to strike, until such delinquent payments are made, and it is further agreed that in the event such action is taken, the Employer shall be responsible to the employees for losses resulting therefrom. The present practice in regard to payment of health, welfare and pension from surplus funds for sickness and injury shall be maintained at no less than the present minimum.

Section 3. Contributions by the Employers into health, welfare, and pension funds for casuals and extra employees shall be continued in accordance with past practice.

Section 4. There shall be no deductions from equipment rental of owner-operators by virtue of the contribution made to the health 141

and welfare fund and pension fund regardless of whether the equipment rental is at the minimum rate or more and regardless of the manner of computation of owner-operator's compensation.

Section 5. The Employer hereby agrees to permit an authorized representative of the respective Local Union's Fund(s) to inspect its payroll records for the purpose of checking the accuracy of the contributions required to be made by the Employer to said fund(s). If the Employer fails to make the contributions provided for herein within the time required by the trust indenture and the rules and regulations of the fund(s) then the Trustees may cancel out the insurance coverage for such employees on whose account the Employer has failed to contribute.

Section 6. All contributing employers must use the reporting forms required by the Trustees of each fund and comply with said instructions of the Trustees in filling out such forms.

ARTICLE 59 — Posting of Bonds

All Local Unions may require the posting of a bond sufficient to cover weekly wages and fringe benefits for those Employers who by financial shortages have created a doubt as to future ability of the Union to collect for its members those conditions provided by the contract. Maintenance of Standards shall prevail for better conditions. Any dispute arising under this paragraph shall be submitted to the grievance procedure. 142

ARTICLE 60 — Loss or Damage

Employees are to use utmost care at all times to prevent loss or damage of freight. Where loss or damage of freight occurs through negligence of the employee, he shall be held responsible for same where it is proven that said damage occurred through his negligence or carelessness. Disputes arising over this paragraph shall be referred to the grievance procedure as provided in Article 46 of this Agreement, but pending the outcome of such grievance, the Employer shall not fix the amount of such damage and/or loss nor shall the Employer attempt to deduct from the employee's wages any money for the alleged damage and/or loss. No employee shall be charged for loss or damage to equipment.

ARTICLE 61 — Examination & Identification Fees

Section 1. (a) Physical, mental or other examinations required by any government body shall be promptly complied with by all employees, provided however, the Employer shall pay for all such examinations. The Employer shall not pay for any time spent in the case of applicants for jobs and shall be responsible to other employees only for time spent at the place of examination or examinations, where the time spent by the employee exceeds two (2) hours, and in that case, only for those hours in excess of two (2). Examinations are to be taken when required by any Government body unless the employee has suffered serious injury or illness. Employees will not be permitted to take examinations during their working 143

hours unless instructed to do so by the Employer.

(b) The Employer reserves the right to select its own medical examiner or physician, and the Union may, if it believes an injustice has been done an employee have said employee re-examined at his own expense.

(c) The Employer shall not require that examinations be taken on Saturdays, Sundays or holidays.

Section 2. Identification — Should the Employer find it necessary to require employees to carry or record full personal identification, such requirements shall be complied with by the employees, provided that the cost of such personal identification shall be borne by the Employer.

ARTICLE 62 — Equipment

Section 1. (a) Employees not required to operate

Defective Equipment — The Employer shall not require employees to take out on the streets or highways any vehicle that is not in safe operating condition or equipped with the safety appliances prescribed by law. It shall not be a violation of this Agreement where employees refuse to operate such equipment, unless such refusal is unjustified.

All equipment which is refused because not mechanically sound or properly equipped, shall be appropriately tagged so that it cannot be used by other drivers until the maintenance department has adjusted the complaint. After the equipment is repaired, the Employer shall place on such equipment an "OK" in a 144

conspicuous place so the driver can see the same.

Under no circumstances will an employee be required or assigned to engage in any activity involving dangerous conditions of work or danger to person or property or in violation of any applicable statute or court order, or in violation of a government regulation relating to safety of person or equipment. The term "dangerous conditions of work" does not relate to the type of cargo which is hauled or handled.

(b) Reports

Employees shall immediately, or at the end of their shifts report all defects of equipment. Such reports shall be made on a suitable form furnished by the Employer, and shall be made in multiple copies, one copy to be retained by the employee. Such reports shall be made out on company time. The Employer shall not ask or require any employee to take out equipment that has been reported by any other employee as being in an unsafe operating condition until same has been approved as being safe by the mechanical department.

(c) If the Employer requests a regular employee to qualify on equipment requiring a special license or in the event an employee is required to qualify (recognizing in seniority) on such equipment in order to obtain a better job opportunity with his Employer, the Employer shall allow such regular employee the use of the equipment in order to take the examination consistent with the applicable State Motor Vehicle Laws and on the employee's time.

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Section 2. Uniforms

The Employer agrees that if any employee is required to wear any kind of uniform as a condition of his continued employment, such uniform shall be furnished and maintained by the Employer free of charge, at the standard required by the Employer. Terminal yardmen and hostlers shall be provided with rain gear. Any employee physically handling in substantial quantities hides, creosoted items, spun glass, lamp black, barbed wire, and acids, shall be provided with rubber or leather aprons and gloves.

Section 3. Winter Safety Equipment

The Employer shall install heaters and defrosters on all trucks and tractors.

ARTICLE 63 — Accidents, Safety Violations, Etc.

Section 1. Accidents

(a) Reports.

Any employee involved in any accident shall immediately report said accident and any physical injury sustained. When required by his Employer, the employee, before going off duty and before starting his next shift, shall make out an accident report in writing on forms furnished by the Employer and shall turn in all available names and addresses of witnesses to the accident. Such reports shall be made out on company time. Failure to comply with this provision shall subject such employee to disciplinary action by the Employer.

(b) Court, Bond, Counsel, etc.

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When an employee is required to appear in any court for the purpose of testifying because of any accident he may have been involved in during working hours, such employee shall be reimbursed in full by the Employer for all earning opportunity lost because of such appearance. The Employer shall furnish employees who are involved in accidents during working hours with bail bond and legal counsel and shall pay in full for same. Said bail bond and legal counsel shall remain assigned to the employee until all legal action in connection with said accident is concluded, provided the employee is not charged and convicted of criminal negligence. This subsection (b) shall not apply to employees who are found guilty of drunken driving when involved in an accident during working hours. The Employer shall assume all responsibility for all court costs, legal fees, and bail bond fees for any employee who is involved in any accident or accidents during working hours and shall assume all responsibility for all judgements and awards against an employee who is involved in accidents during working hours, which result through court action against said employee, except as provided above.

ARTICLE 64 — Sanitary Conditions

Garages or terminals of the Employers must provide sanitary conditions for employees covered by this Agreement. The Employer must furnish toilet facilities, hot and cold running water, and soap.

ARTICLE 65 — Inspection of Payroll Records

An authorized representative of the Union and Committee shall have the 147

right to inspect the Employer's pay records, time cards, health and welfare and pension fund records and/or other records of the employees.

ARTICLE 66 — Road or Long Line Operations

Employees of the Employer who are engaged in road or long line operations as distinguished from the Local Pick-up and Delivery operations covered by this contract shall be covered by all terms of this Agreement excepting the wage rates and methods of payment. With respect to wage rates and methods of payment, they shall be paid in accordance with the prevailing union contract in the areas into and out of which they operate for Employer, providing, however, at no time shall they receive less than the hourly rate provided in this contract for the type work covered by this contract. In regard to Health, Welfare, Pension, Vacations and Holidays, this provision shall not apply where there are established rates for the road operation. Past practices shall prevail and increases be granted accordingly.

ARTICLE 67 — Company Rules

The Employer may establish such company rules as he deems necessary or desirable, provided that such rules are not in conflict with the terms and provisions of this Agreement, and further provided that no such company rules shall become effective without written approval of the Local Union. Any controversy between 148

APPENDIX "A"

JOB CLASSIFICATIONS & WAGE RATES

Locals 816 and 282

Day Rate

	Eff. Date	Hourly Rate	Daily Rate	Weekly Rate	Time & one-half	Double Time
Tractor Trailer Drivers Tandem Equipment and Switchers	7/1/73	6.31	50.48	252.40	9.465	12.62
	7/1/74	6.61	52.88	264.10	9.915	13.22
	7/1/75	6.91	55.28	276.40	10.365	13.82
Straight Truck Drivers	7/1/73	6.21	49.68	248.40	9.315	12.42
	7/1/74	6.51	52.08	260.40	9.765	13.02
	7/1/75	6.81	54.48	272.40	10.215	13.62
Motorized Lift Truck Operators	7/1/73	6.00	48.00	240.00	9.00	12.00
	7/1/74	6.30	50.40	252.00	9.45	12.60
	7/1/75	6.60	52.80	264.00	9.90	13.20
Checkers	7/1/73	5.873	46.984	234.92	8.8095	11.746
	7/1/74	6.173	49.384	246.92	9.2595	12.346
	7/1/75	6.743	51.784	258.92	9.7095	12.946

Locals 816 and 282—(Continued)

Night Rate

	Eff. Date	Hourly Rate	Rate Daily	Weekly Rate	Time & one-half	Double Time
Straight Truck Drivers	7/1/73	6.335	50.68	253.40	9.5025	12.670
	7/1/74	6.635	53.08	265.40	9.9525	13.270
	7/1/75	6.935	55.48	277.40	10.2525	13.870
Motorized Lift Truck Operators	7/1/73	6.125	49.00	245.00	9.1875	12.250
	7/1/74	6.425	51.40	257.00	9.6375	12.850
	7/1/75	6.725	53.80	269.00	10.0875	13.450
Checkers	7/1/73	5.998	47.984	239.92	8.997	11.996
	7/1/74	6.298	50.384	251.92	9.447	12.596
	7/1/75	6.598	52.784	263.92	9.897	13.196
Platform Men	7/1/73	5.998	47.984	239.92	8.997	11.996
	7/1/74	6.298	50.384	251.92	9.447	12.596
	7/1/75	6.598	52.784	263.92	9.897	13.196
Helpers	7/1/73	5.998	47.984	239.92	8.997	11.996
	7/1/74	6.298	50.384	251.92	9.447	12.596
	7/1/75	6.598	52.784	263.92	9.897	13.196
Warehousemen	7/1/73	5.998	47.984	239.92	8.997	11.996
	7/1/74	6.298	50.384	251.92	9.447	12.596
	7/1/75	6.598	52.784	263.92	9.897	13.196

Locals 816 and 282—(Continued)

Day Rate

	Eff. Date	Hourly Rate	Daily Rate	Weekly Rate	Time & one-half	Double Time
Platform Men	7/1/73	5.873	46.984	234.92	8.8095	11.746
	7/1/74	6.173	49.384	246.92	9.2595	12.346
	7/1/75	6.473	51.784	258.92	9.7095	12.946
Helpers	7/1/73	5.873	46.984	234.92	8.8095	11.746
	7/1/74	6.173	49.384	246.92	9.2595	12.346
	7/1/75	6.473	51.784	258.92	9.7095	12.946
Warehousemen	7/1/73	5.873	46.984	234.92	8.8095	11.746
	7/1/74	6.173	49.384	246.92	9.2595	12.346
	7/1/75	6.473	51.784	258.92	9.7095	12.946

APPENDIX "A"

JOB CLASSIFICATIONS & WAGE RATES

Locals 816 and 282

Night Rate

	Eff. Date	Hourly Rate	Daily Rate	Weekly Rate	Time & one-half	Double Time
Tractor Trailer Drivers	7/1/73	6.435	51.480	257.40	9.6525	12.870
	7/1/74	6.735	53.880	269.40	10.1025	13.470
	7/1/75	7.035	56.280	281.40	10.5525	14.070

APPENDIX "A"

JOB CLASSIFICATIONS & WAGE RATES

Local 701

	Eff. Date	Hourly Rate	Daily Rate	Weekly Rate	Time & one-half	Double Time
Tractor Trailer Drivers Tandem Equipment and Switchers	7/1/73	6.25	50.00	250.00	9.375	12.50
	7/1/74	6.55	52.40	262.00	9.825	13.10
	7/1/75	6.85	54.80	274.00	10.275	13.70
Straight Truck Drivers	7/1/73	6.15	49.20	246.00	9.225	12.30
	7/1/74	6.45	51.60	258.00	9.675	12.90
	7/1/75	6.75	54.00	270.00	10.125	13.50
Motorized Lift Truck Operators (Hi-Lo)	7/1/73	5.94	47.52	237.60	8.91	11.88
	7/1/74	6.24	49.92	249.60	9.36	12.48
	7/1/75	6.54	52.32	261.60	9.81	13.08
Checkers	7/1/73	5.81	46.48	232.40	8.715	11.62
	7/1/74	6.11	48.88	244.40	9.165	12.22
	7/1/75	6.41	51.28	256.40	9.615	12.82
Utility Platform Men	7/1/73	5.88	47.04	235.20	8.82	11.76
	7/1/74	6.18	49.44	247.20	9.27	12.36
	7/1/75	6.48	51.84	259.20	9.72	12.96
Platform Men, Helpers, Warehousemen	7/1/73	5.81	46.48	232.40	8.715	11.62
	7/1/74	6.11	48.88	244.40	9.165	12.22
	7/1/75	6.41	51.28	256.40	9.615	12.82

APPENDIX "A"

JOB CLASSIFICATIONS & WAGE RATES

Locals 240, 445, 469, 560, 617, 641, 660, 707, 805 and 806

	Eff. Date	Hourly Rate	Daily Rate	Weekly Rate	Time & one-half	Double Time
Tractor Trailer Drivers Tandem Equipment and Switchers	7/1/73	6.31	50.48	252.40	9.465	12.62
	7/1/74	6.61	52.88	264.40	9.915	13.22
	7/1/75	6.91	55.28	276.40	10.365	13.82
Straight Truck Drivers	7/1/73	6.21	49.68	248.40	9.315	12.42
	7/1/74	6.51	52.08	260.40	9.765	13.02
	7/1/75	6.81	54.48	272.40	10.215	13.62
Motorized Lift Truck Operators	7/1/73	6.00	48.00	240.00	9.00	12.00
	7/1/74	6.30	50.40	252.00	9.45	12.60
	7/1/75	6.60	52.80	264.00	9.90	13.20
Checkers, Platform Men Helpers & Warehousemen	7/1/73	5.87	46.96	234.80	8.805	11.74
	7/1/74	6.17	49.36	246.80	9.255	[illegible]
	7/1/75	6.47	51.76	258.80	9.705	[illegible]

APPENDIX "A"

JOB CLASSIFICATIONS & WAGE RATES

Local 807

Night Rate

	Eff. Date	Hourly Rate	Wage Per Day (Mon.-Fri.)	Wage 5 days (Mon.-Fri.)	Overtime Per Hour
Tractor Trailer Drivers	7/1/73	6.435	51.480	257.40	9.6525
	7/1/74	6.735	53.880	269.40	10.1025
	7/1/75	7.035	56.280	281.40	10.5525
Straight Truck Drivers	7/1/73	6.335	50.68	253.40	9.5025
	7/1/74	6.635	53.08	265.40	9.9525
	7/1/75	6.935	55.48	277.40	10.2525
Hi-Lo Operators	7/1/73	6.125	49.00	245.00	9.1875
	7/1/74	6.425	51.40	257.00	9.6375
	7/1/75	6.725	53.80	269.00	10.0875
Helpers, Platform Men Checkers & Warehousemen	7/1/73	6.00	48.00	240.00	9.00
	7/1/74	6.30	50.40	252.00	9.45
	7/1/75	6.60	52.80	264.00	9.90

APPENDIX "A"

JOB CLASSIFICATIONS & WAGE RATES

Local 807

Day Rate

	Eff. Date	Hourly Rate	Wage Per Day (Mon.-Fri.)	Wage 5 days (Mon.-Fri.)	Overtime Per Hour
Tractor Trailer Drivers	7/1/73	6.31	50.48	252.40	9.465
	7/1/74	6.61	52.88	264.40	9.915
	7/1/75	6.91	55.28	276.40	10.365
Straight Truck Drivers	7/1/73	6.21	49.68	248.40	9.315
	7/1/74	6.51	52.08	260.40	9.765
	7/1/75	6.81	54.48	272.40	10.215
Hi-Lo Operators	7/1/73	6.00	48.00	240.00	9.00
	7/1/74	6.30	50.40	252.00	9.45
	7/1/75	6.60	52.80	264.00	9.90
Helpers, Platform Men, Checkers & Warehousemen	7/1/73	5.875	47.00	235.00	8.8125
	7/1/74	6.175	49.40	247.00	9.2625
	7/1/75	6.475	51.80	259.00	9.7125

IN WITNESS WHEREOF the parties hereto have set their hands and seals this ..... day of ....., 1973, to be effective as of July 1, 1973, except as to those areas where it has been otherwise agreed between the parties.

NEGOTIATING COMMITTEE

For the Employees:

NATIONAL OVER-THE-ROAD AND CITY CARTAGE POLICY NEGOTIATING COMMITTEE

Frank E. Fitzsimmons
(Chairman)

Murray W. Miller	Joseph Trerotola
Robert Holmes	Arnie Weinmeister
Weldon L. Mathis	Roy Williams
William J. McCarthy	Walter J. Shea
George E. Mock	Elvin E. Hughes
Einar O. Mohn	Robert T. Flynn
Joseph Morgan	Walter W. Teague
Edward Nangle	Howard Jones
William Presser	Verne Milton
Salvatore Provenzano	Robert Rampy
Ray Schoessling	Al Weiss

NEW JERSEY—NEW YORK UNION NEGOTIATING COMMITTEE

Richard C. Bell, Chairman
James Geoghegan, Local 282
Theodore Daley, Local 445
William Johnson, Local 469
Joseph P. Uzzolino, Local 478
Salvatore Provenzano, Local 560
William Farrell, Local 617

Lawrence McDermott, Local 641
Robert Coar, Local 701
Louis Alimena, Local 707
Abe Gordon, Local 805
George Snyder, Local 806
Joseph Mangan, Local 807
Lester Connell, Local 816

For the Employers:

TRUCKING EMPLOYERS, INC.

C. G. Zwingle
(Chairman)

Arthur E. Imperatore	Robert F. Todd
Vincent R. Dagen	John A. Murphy
E. W. Swan	Charles J. Lawlor
Rudy Pulliam	R. S. McIlvennan

NEW JERSEY-NEW YORK EMPLOYER NEGOTIATING COMMITTEE

Frank Scotto, Chairman	Wallace O'Reilly
Joe Adams	Frank Wolf
Louis Brenner	Leo Smith
Clarence Frankel	Martin Michaels
Robert Kortenhaus	James McHugh

IN WITNESS HEREOF the undersigned do duly execute The National Master Agreement and Supplemental Agreement (and Riders, if any) set forth herein.

..... FOR THE UNION .....

LOCAL UNION No. 282, affiliate of International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America.

By .....
(Signed)

Its .....
(Title)

..... FOR THE COMPANY .....

THE [illegible] CORP.
(Company)

By .....
(Signed)

Its Exec. V.P. - Treasurer
(Title)

Home Office Address:

48-25 Metropolitan Ave.
(Street)

Brooklyn New York
(City) (State)

6/5/74
(Date Signed)

This Agreement is approved as to form only by the International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, and in doing so the International Union assumes no liability whatsoever under this Agreement for the performance thereof or otherwise, and by such approval does not become a party to the Agreement.

APPROVED:

INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN AND HELPERS OF AMERICA

FRANK E. FITZSIMMONS
General President

EXHIBIT "C"

NEW YORK CITY JOINT LOCAL COMMITTEE
Locals 282-707-807 and 816
111 4th Avenue
New York, N. Y. 10003
674-4141

CERTIFIED
R. R. R.

May 16, 1975

Mr. Joseph Binder
The Bohack Corporation
48-25 Metropolitan Avenue
Brooklyn, N. Y. 11237

Re: Case No. EM-374
Local 807 vs Bohack Corporation
Violation Art. 32, Sec. 1 Para. 2
of the Rider Agreement

Dear Mr. Binder:

The above dispute was heard by the New York City Joint Local Committee Emergency Meeting held in the offices of New York State Motor Truck Association on Monday, May 12, 1975, all appearing parties testified and were heard.

The Committee in executive session ruled that:

"Based on the evidence and testimony presented in this instant case - The Committee is constraint and has no alternative but to rule the Company is in violation of Article 32. Accordingly, the Company is ordered to cease and desist, forthwith, from having its bargaining unit work subcontracted out which is viclative of said Article."

Attached is a bill in the amount of $25.00 covering the hearing of this case.

Very truly yours,

Frank Scotto
Employer Co-Chairman

FS:mr

cc: John Hohmann - Local 807 ✓

46a

EXHIBIT "C-1"

THIS FORM MUST BE USED IN FILING ALL GRIEVANCES

New York City Joint Local Committee

DATE RECEIVED .....

CASE NO. .....

FOR COMMITTEES' USE ONLY

DATE CASE HEARD .....

PRE-HEARING INFORMATION

In order that the Committee Members may be familiar with the important features in this case, will you kindly fill out the following form as completely as possible. The information submitted herein will be treated as a preliminary general statement of your position.*

1. Union Name: Truck Drivers Local Union No. 807, I.B.T.
   Address: 32-43 49th Street, Long Island City, New York 11103
2. Name of Agent handling particular grievance: John Hohmann
3. A. Name of Employee filing complaint: N/A
   B. Classification of Work: Truck Drivers
   C. Date of Employment: .....
4. Name and Address of Carrier involved: The Bohack Corporation
   48-25 Metropolitan Avenue, Brooklyn, New York 11237
5. Circumstances of the Dispute (Check one)
   A. Warning Notice ..... C. Discharge .....
   B. Disciplinary time off ..... D. Back pay claim X
   E. Others: Health and pension claims failed to take action pursuant to an arbitration award.
6. Date on which company ~~took action against employee~~: 5/21/75
7. Indicate that part of contract which you claim was violated: Article 33,51,56,57,58
8. Date on which alleged violation took place: 5/21/75
9. Date on which grievance was first taken up with management: N/A
10. Exact amount of back pay, if any, claimed by aggrieved employee: $43,330.56 (see attached schedule)
    Health $3,207.88, Pension $5,013.32
11. Your Position (Also include brief resume of pertinent facts — use back of sheet if necessary)
    The New York City Joint Local Committee rendered an award dated May 16, 1975 directing The Bohack Corporation to cease and desist from subcontracting out work performed by the drivers in violation of Article 32. The Employer has failed to comply with this award and, thereby, has prevented the bargaining unit employees from receiving the wages, differentials, holidays, health and pension benefits, vacation credit and other terms and conditions set forth in their collective bargaining agreement.

*PREPARE FOUR COPIES

1st Copy — Mail to Union Co-Secretary
2nd Copy — Mail to Employer Co-Secretary
3rd Copy — Mail to Company Involved
4th Copy — Local Union

47a John Hohmann
For the Party filing grievance

DATE: June 17, 1975

Rate 53.76 per day 31 men a day Exhibit "C-1"

		Kraasdale (6) men	Royal Foods (6) men	Ditching
May	21	$322.56	$322.56	$102.44
	22	$322.56	$322.56	$102.44
	23	$322.56	$322.56	$102.44
Hol	26	$322.56	$322.56	$102.44
May	27	$322.56	$322.56	$102.44
	28	$322.56	$322.56	$102.44
	29	$322.56	$322.56	$102.44
	30	$322.56	$322.56	$102.44
June	2	$322.56	$322.56	$102.44
	3	322.56	322.56	102.44
	4	322.56	322.56	102.44
	5	322.56	322.56	102.44
	6	322.56	322.56	102.44
June	9	$322.56	$322.56	$102.44
	10	322.56	322.56	102.44
	11	322.56	322.56	102.44
	12	322.56	322.56	102.44
	13	322.56	322.56	102.44
June	16	$322.56	$322.56	$102.44
	17	322.56	322.56	102.44
	18	322.56	322.56	102.44
	19	322.56	322.56	102.44
	20	322.56		
June	23	$322.56	$322.56	$102.44
	24	322.56	322.56	102.44
	25	322.56	322.56	102.44
		$8,386.56	$8,386.56	$2,655.74

Plus W+P for all days

Labor Fund - $3,267.84 Crane Fund - $5,013.32

EXHIBIT "D"

UNITED STATES DISTRICT COURT

EASTERN DISTRICT OF NEW YORK

IN THE MATTER OF	:	
THE BOHACK CORPORATION,	:	Bankruptcy No. 74: B 933
Debtor,	:	
THE BOHACK CORPORATION,	:	
Plaintiff,	:	ORDER AND PRELIMINARY INJUNCTION
- against -	:	
TRUCK DRIVERS UNION LOCAL 807, INTERNATIONAL BROTHERHOOD OF TEAMSTERS, et al.,	:	
Defendants.	:	

This cause having come to be heard on plaintiff's motion for a preliminary injunction pursuant to Federal Rule of Civil Procedure 65 pending final determination of this action, and the defendants having duly appeared and the Court having read and considered the order to show cause dated June 30, 1975, the summons and complaint, the affidavit of Joseph Binder sworn to on June 30, 1975, submitted in support of said motion and such motion having regularly come on to be heard on July 7, 1975, Shaw and Levine (Jesse Levine, Esq., of counsel), and Kelley Drye & Warren (Marc L. Silverman, Esq., of counsel), attorneys for the plaintiff, having appeared in support of said motion, and J. Warren Mangan, Esq., attorney for the defendants, having appeared in opposition to said motion, and the Court having heard the sworn testimony of witnesses in open Court with opportunity

for cross examination in support of and in opposition to said motion, and due deliberation having been had, the Court makes the following

FINDINGS OF FACT

1. There is currently in effect a collective bargining agreement between plaintiff, an employer, and Truck Drivers Local Union No. 807, International Brotherhood of Teamsters, a labor organization representing employees within this judicial district in an industry affecting commerce as defined in the Labor Management Relations Act, 29 U.S.C. Section 141, et seq.;

2. Said agreement contains a no-strike clause barring defendants from conducting a strike, walkout, or work stoppage, or establishing a picket line at any of plaintiff's various places of business;

3. On May 12, 1975, an arbitration proceeding was held before the New York City Joint Local Committee with respect to a dispute between the parties concerning the layoff of a number of defendant Union's drivers, and, on May 16, 1975, the New York City Joint Local Committee rendered an award adverse to the plaintiff.

4. Prior to the above arbitration proceeding, neither party to the collective bargaining agreement requested permission from this Court to proceed to arbitration.

5. On June 30, 1975, the defendants, in violation

of the parties' collective bargaining agreement, conducted an unlawful strike and engaged in unlawful picketing at the plaintiff's Bohack Terminal and at sixteen (16) of its retail stores;

6. As a result of said unlawful acts, substantial and irreparable injury and interference with plaintiff's property has occurred and will continue to occur, if defendants resume such unlawful acts, because of the loss of substantial revenues, diversion of plaintiff's customers to competitors and the injury to plaintiff's good will, all of which damages it is impossible to determine with precision;

7. Damages are an inadequate remedy for the injury which plaintiff has suffered and will continue to suffer unless defendant's unlawful acts are restrained, and

8. As to each item of relief granted below, greater injury will be inflicted upon plaintiff by the denial of said relief than will be inflicted upon defendants by the granting of said relief.

On the basis of the foregoing, the Court makes the following

CONCLUSIONS OF LAW

1. This Court has jurisdiction of this suit pursuant to the provisions of 29 U.S.C. §185;

2. By virtue of the parties failure to request this Court's permission to proceed to arbitration and no

such permission having been given, the arbitration proceeding held before the New York City Joint Local Board was not authorized by this Court and the award rendered by the New York City Joint Local Board is null and void and of no legal effect.

3. That the defendants and each of them have committed within this judicial district and will continue to commit unless restrained the unlawful acts in violation of the parties' collective bargaining agreement above-described;

4. Said unlawful acts have resulted in and will continue to result in unless restrained immediate, substantial and irreparable injury to plaintiff before this action can finally be determined;

5. Plaintiff has no adequate remedy at law;

6. The Court has jurisdiction to entertain a preliminary injunction herein; and it is therefore

ORDERED, that plaintiff's motion for a preliminary injunction pursuant to Federal Rule of Civil Procedure 65 pending final determination of this action is hereby granted, and it is further

ORDERED, that, pending the final determination of this action, defendants, TRUCK DRIVERS LOCAL 807, INTERNATIONAL BROTHERHOOD OF TEAMSTERS, JOSEPH MANGAN, JOSEPH ABBATE, VICTOR ANTONELLE, JOSEPH BIERNACK, STEVEN BLAKLEY, JOHN CHRUSCIAL, NICHOLAS D'ALESSANDRO, JOHN D'AMBROSIO,

GEORGE DENN, JAMES FARRELL, HANDS FLETCHER, HERMAN GENSINGER, ANTHONY GEORGE, DANIEL GEYER, CHARLES HALEY, DANIEL HALPIN, WILLIAM HAWLEY, ROBERT HART, JAMES HERRING, JAMES HILL, VINCENT HUGHES, CHARLES KELLER, WILLIAM KELLY, JOHN KEPICH, RAYMOND LAND, EDWARD LIPINSKY, RICHARD MAKARJUS, WALTER MAKARIUS, WILLIAM MATHESON, PHILLIP MYCH, CHARLES NICOSIA, JOHN NIEDERMEYER, CHARLES O'BRIEN, JOSEPH OCHS, ROBERT O'MALLEY, JOHN OPITZ, GEORGE PLUNKETT, JAMES REILLY, FRANCIS SCH[illegible]ENRY SOHILLER, ROBERT SCHOLZ, GEORGE SCHRIERCK, WILLIAM SHIPMAN, CHARLES SPIEGEL, JOHN STAS, JOHN TALT, ANDREW TUNSI, RAYMOND VANDERBECK, WALTER WALIKAS, BERNARD ZIMMERMAN, and all other members of defendant Local 807 and other persons in active concert or participation with them who receive actual notice of the order of this Court, by personal service or otherwise, are

Enjoined and restrained from engaging in or continuing, or organizing, inducing, or encouraging others to engage in or continue, any strike, walkout, work stoppage or any other cessation of work, or establishing a picket line at plaintiff's various places of business or at the premises of any other person or party with whom plaintiff does business.

C. Albert Parente
Bankruptcy Judge

JUL 19[illegible]
C. ALBERT PARENTE
BANKRUPTCY JUDGE

53 C

EXHIBIT "E"

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

In The Matter of THE BOHACK CORPORATION, Debtor,	Bankruptcy No. 74: B 933
THE BOHACK CORPORATION, Plaintiff, -against- TRUCK DRIVERS UNION LOCAL 807, INTERNATIONAL BROTHERHOOD OF TEAMSTERS, et al., Defendants.	NOTICE OF APPEAL

TO THE UNITED STATES DISTRICT COURT, EASTERN DISTRICT OF NEW YORK:

Truck Drivers Local Union No. 807, I.B.T., a defendant in this action appeals to the District Court from the temporary restraining order of Referee C. Albert Parent entered in this case on June 30, 1975 and the preliminary injunction order of the Referee C. Albert Parent entered in this case on July 16, 1975, both enjoining and restraining Truck Drivers Local Union No. 807, and other named defendants from engaging in or continuing, or organizing, inducing, or encouraging others to engage in or continue, in a strike, walkout, work stoppage or any cessation of work, or establishing a picket line at plaintiff's various places of business or at the premises of any other person or party with

whom plaintiff does business. The defendant, Truck Drivers Local Union No. 807, I.B.T., also appeals from the order of the Referee C. Albert Parente entered in this case on July 18, 1975 denying its motion to vacate said temporary restraining order and for an assessment of damages.

The parties to the order appealed from and the names and address of their respective attorneys are listed on the attached sheet.

J. WARREN MANGAN, ESQ.

Attorney for Defendant, Truck Drivers Local Union No. 807, I.B.T.

32-43 49th Street
Long Island City, New York 11103
(212) 726-6009

The Bohack Corporation by:

Shaw and Levine, Esqs.
(Jesse Levine, Esq., of counsel)
770 Lexington Avenue
New York, New York 10021

Kelly Drye & Warren, Esqs.
(Marc L. Silverman, Esq., of counsel)
350 Park Avenue
New York, New York 10022

Other Defendants:

Joseph Mangan
714 East 40th Street
Brooklyn, New York

Victor Antonelle
74-45 Yellowstone Blvd.
Flushing, New York

Steven Blakley
79-17 68th Road
Middle Village, New York

Nicholas D'Alessandro
34-24 82nd Street
Jackson Heights, New York

George Denn
195 Locust Drive
Bayshore, New York

Harold Fletcher
42-64 65th Place
Woodside, New York

Anthony George
34-10 94th Street
Jackson Heights, New York

Charles Haley
93-40 Francis Lewis Blvd.
Queens Village, New York

William Hanley
255 50th Street
Brooklyn, New York

James Herring
95-15 Linden Blvd.
Ozone Park, New York

Joseph Abbate
44 East Avenue
Freeport, New York

Joseph Biernacki
187 Franklin Street
Brooklyn, New York

John Chrusciel
117-02 232nd Street
Cambria Heights, New York

John D'Ambrosio
6252 65th Street
Middle Village, New York

James Farrell
60-44 255th Street
Little Neck, New York

Herman Gensinger
57 Millbrook Park
Calverton, New York

Daniel Geyer
134-39 241 Street
Rosedale, New York

Daniel Halpin
541 DuBois Avenue
Valley Stream, New York

Robert Hart
752 59th Street
Brooklyn, New York

James Hill
87-76 254th Street
Bellerose, New York

Vincent Hughes
106 Milton Street
Brooklyn, New York

William Kelly
25 South 18th Street
New Hyde Park, New York

Raymond Lang
66 Hausman Street
Brooklyn, New York

Richard Makarius
187 Franklin Street
Brooklyn, New York

lliam Matheson
34 Melba Court
Brooklyn, New York

Charles Nicosia
133-23 123rd Street
Ozone Park, New York

Charles O'Brien
146 North 8th Street
Brooklyn, New York

Robert O'Malley
1571 First Avenue
New York, New York

George Plunkett
243-15 134th Avenue
Rosedale, New York

Frank Scherz
97-37 85th Street
Ozone Park, New York

Robert Scholz
90-57 202 Street
Hollis, New York

William Shipman
136-23 242nd Street
Rosedale, New York

John Stas
69-33 61st Drive
Middle Village, New York

Charles Keller
60-57 76th Street
Elmhurst, New York

John Kepich
2A Fornum Street
Lynbrook, New York

Edward Lipinsky
6268 65th Street
Middle Village, New York

Walter Makarius
38 Garden Street
Valley Stream, New York

Philip J. Mych
255 Litchfield Avenue
Elmont, New York

John Niedermayer
42 Aspen Road
San Remo Kings Park, New York

Joseph Ochs
118 Meserole Avenue
Brooklyn, New York

John Opitz
8526 123rd Street
Kew Gardens, New York

James Reilly
75-02 61st Street
Glendale, New York

Henry Schiller
6117 79th Street
Middle Village, New York

George Schreieck
8847 76th Street
Woodhaven, New York

Charles Spiegel
70-23 72nd Street
Glendale, New York

John Talt
255 Avenue T
Brooklyn, New York

Andrew Tursi
2807 Avenue P
Brooklyn, New York

Raymond Vanderbeck
87-06 219th Street
Queens Village, New York

Walter Walikas
142 North 10th Street
Brooklyn, New York

Bernard Zimmerman
187 Franklin Street
Brooklyn, New York

EXHIBIT "F"

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK
----------x

In the Matter

of

THE BOHACK CORPORATION,

Debtor.

----------x

ORDER TO SHOW CAUSE

74 B 933

Upon the annexed application of the debtor dated July 17, 1975, and the contract annexed thereto, let TRUCK DRIVERS UNION LOCAL 807, INTERNATIONAL BROTHERHOOD OF TEAMSTERS, show cause before this Court at the United States Courthouse, Eastern District of New York, Bankruptcy Division, 90-04 161st Street, Jamaica, New York on the 25 day of July, 1975, at 9:30 A.M. or as soon thereafter as counsel can be heard, why the Debtor in Possession should not be permitted to reject the executory contract appended to annexed application, between the debtor and the union, and it is

ORDERED, that a copy of this order together with the application upon which it is granted be served upon any officer of TRUCK DRIVERS UNION LOCAL 807, INTERNATIONAL BROTHERHOOD OF TEAMSTERS and the attorneys for the Creditors Committee on or before July 22, 1975.

C. ALBERT PARENTE

Dated: Jamaica, New York
July 18, 1975

C. ALBERT PARENTE
Bankruptcy Judge

59a

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK
----------X

In the Matter

of

THE BOHACK CORPORATION,

Debtor.

APPLICATION FOR REJECTION OF EXECUTORY CONTRACT

74 B 933

----------X

TO THE HON. C. ALBERT PARENTE, BANKRUPTCY JUDGE:

The application of THE BOHACK CORPORATION, by KELLEY DRYE & WARREN, ESQS., and of J. STANLEY SHAW, ESQ., respectfully shows to the Court as follows:

1. That a petition for an arrangement under Chapter XI of the Bankruptcy Act was filed by the Debtor herein on July 30, 1974 and that applicant has continued in possession of its property by order of this Court dated July 30, 1974.

2. That as required by Rule 11-11 of the Chapter XI Rules, the Debtor's petition for an arrangement herein was accompanied by a statement of the Debtor's executory contracts, one of which was the contract between THE BOHACK CORPORATION and TRUCK DRIVERS UNION LOCAL 807, INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN AND HELPERS OF AMERICA (hereinafter referred to as Local 807).

3. Said contract was entered into on July 1, 1973 to run until June 30, 1976, and the applicant desires, in the best interests of the estate, permission of this Court to reject said executory contract.

60a

4. The reason applicant seeks to reject said contract is that it is onerous and burdensome to the Debtor and substantial savings and potential profits can be realized and effected if such contract is rejected.

5. As part of its Plan of Arrangement, THE BOHACK CORPORATION is subleasing or selling portions of its terminal at Bohack Square and will deal directly with suppliers who will deliver to Bohack stores rather than a central warehouse.

6. The discontinuation of the warehousing operation is an integral part of the proposed plan in that the debtor can become profitable in its store operations, which operations have been greatly reduced since the filing of the original petition herein, if the costly warehouse and trucking operations now conducted by the debtor can be eliminated. Inasmuch as the wholesale suppliers whose agreements to sell to the debtor have been approved by this Court can deliver directly to the stores much more cheaply than the present utilization of Local 807 drivers, there is placed on the debtor a substantial cash flow drain which can be eliminated by rejection of the Local 807 contract, and concurrently, discontinuing the warehouse operation.

7. Additionally, the proposed plan of arrangement requires disposition of certain real property assets of the debtor, including portions of the terminal at Bohack Square. Rejection of this contract and the warehouse operation will allow the needed flexibility to carry out that part of the plan.

8. Unless the foregoing two goals can be achieved, no successful plan of arrangement can be made and fulfilled. Rejection of Local 807's contract is necessary to achieve those goals.

9. The savings and the potential profits will inure to the benefit of the general creditors of the estate of the Debtor and will make feasible the carrying out of the Plan of Arrangement which is now before the Creditors' Committee for final agreement before presentation for confirmation.

10. No prior application has been made for the relief sought herein.

WHEREFORE, applicant prays for an order rejecting the executory contract between the debtor and Local 807, dated July 1, 1973, and granting such other and further relief as to the Court may seem just and proper.

Dated: New York, New York
July 7, 1975

KELLEY, DRYE & WARREN
By: William C. Blum
A Member of the Firm

Attorneys for Debtor
Office & P. O. Address:
350 Park Avenue
New York, New York 10022
(212) PL 2-5800

J. STANLEY SHAW, ESQ.

Co-Counsel for Debtor
Office & P. O. Address:
370 Lexington Avenue
New York, New York 10021
(212) 838 - 7127

Exhibt "G"

RIDER AGREEMENT, made and entered into as of the first day of July, 1973 by and between TRUCK DRIVERS LOCAL UNION NO. 807, INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN AND HELPERS OF AMERICA, with offices at 32-43 49th Street, Long Island City, New York 11103 (hereinafter referred to as "LOCAL 807"), and ... THE BOHACK CORPORATION ... having its principal place of business at .....

(hereinafter referred to as the "EMPLOYER").

WITNESSETH:

WHEREAS, LOCAL 807 and the EMPLOYER agree that their current collective bargaining agreement, covering the EMPLOYER'S subject employees, shall be comprised of the 1973-1976 NATIONAL MASTER FREIGHT AGREEMENT and the NEW JERSEY-NEW YORK AREA GENERAL TRUCKING SUPPLEMENTAL AGREEMENT, plus Schedule "B" (hereinafter collectively referred to as the "1973-1976 AREA-WIDE MASTER FREIGHT AGREEMENT") and this RIDER AGREEMENT.

NOW, THEREFORE, it is mutually agreed by and between LOCAL 807 and the EMPLOYER as follows:

1. terms, standards and conditions that existed in LOCAL 807's 1964-1967 General Trucking Agreement shall remain in effect and be incorporated as a part of the 1973-1976 AREA-WIDE MASTER FREIGHT AGREEMENT as if set forth at length herein, except as specifically changed, modified or amended by the terms and conditions of the 1973-1976 AREA-WIDE MASTER FREIGHT AGREEMENT. LOCAL 807 and the EMPLOYER shall be bound in all respects by said incorporated provisions.

2. (a) For the purpose of this Agreement the EMPLOYER agrees to refrain from using the services of any person who does not observe the wages, hours and conditions of employment set forth in 1973-1976 AREA-WIDE MASTER FREIGHT AGREEMENT.

(b) In all cases hired or leased equipment shall be operated by an employee of the EMPLOYER and such employee shall be paid pursuant to the terms of this Agreement. The EMPLOYER expressly reserves the right to control the means, manner and details of and by which the operator of said hired or leased equipment performs his services, as well as the ends to be accomplished.

(c) Where employees are hired through any employment agency, the EMPLOYER shall pay any and all charges. The EMPLOYER shall not enter into any other written or oral agreement with any employment agency which in any way violates the wages, hours and working conditions of this Agreement.

In the event the EMPLOYER violates these provisions LOCAL 807 shall be free to take economic action within twenty-four (24) hours notice not withstanding any other provisions contained in the 1973-1976 AREA-WIDE MASTER FREIGHT AGREEMENT.

3. Within thirty (30) working days after the hire of any new employee, the EMPLOYER shall notify LOCAL 807, in writing of the employee's name, address, date of hire and social security number, except where such new employee is an owner-operator or other operator of leased or hired equipment the notice shall be supplied within three (3) working days.

4. (a) All disputes between LOCAL 807 and the EMPLOYER relating to contributions to the Local 807 Labor-Management Health and Pension Funds shall be submitted by either party to the NEW YORK CITY TRUCKING AUTHORITY for final and binding arbitration.

63 a

5. The allocation of additional contributions to the Local 807 Labor-Management Health and Pension Funds, set forth in Schedule B and effective July 1, 1974 and July 1, 1975, as between the Health Fund and Pension Fund shall be determined by LOCAL 807 in its sole discretion prior to the respective dates thereof. The EMPLOYER shall increase its contributions to each or both of said Funds in accordance with LOCAL 807's determination.

6. The 1973-1976 AREA-WIDE MASTER FREIGHT AGREEMENT provides that disputes between an EMPLOYER and LOCAL 807 relating to the discharge or proposed discharge of an employee covered by said Agreement may be submitted by either party to arbitration before the NEW YORK CITY TRUCKING AUTHORITY. EMPLOYERS failing to contribute to the support of the NEW YORK CITY TRUCKING AUTHORITY may be deprived of the right to submit disputes relating to discharges or proposed discharges to said Authority. In such event, LOCAL 807 shall have the right to order a work stoppage and any such work stoppage shall not be considered a breach of the 1973-1976 AREA-WIDE MASTER FREIGH AGREEMENT.

Should an EMPLOYER fail to pay his share of the cost of an arbitration proceeding in which said EMPLOYER was a participant, LOCAL 807 shall have the right to order a work stoppage and such work stoppage shall not be considered a breach of the 1973-1976 AREA-WIDE MASTER FREIGHT AGREEMENT.

7. That the wages, hours and other terms and conditions set forth in the 1973-1976 AREA-WIDE MASTER FREIGHT AGREEMENT shall become effective on and be retroactive to July 1, 1973.

8. This RIDER AGREEMENT shall be physically annexed to and made part of the 1973-1976 AREA-WIDE MASTER FREIGHT AGREEMENT for all purposes.

9. EMPLOYER contributions to the Local 807 Labor-Management Health and Pension Funds, on behalf of corporate officers or salaried employees, performing covered employment during a quarterly reporting period, shall be for a minimum of 520 hours for said quarter.

IN WITNESS WHEREOF, the parties hereto have affixied their signatures by their duly authorized officers and representatives as of the day and year first above written.

TRUCK DRIVERS LOCAL UNION NO. 807,
INTERNATIONAL BROTHERHOOD OF TEAMSTERS,
CHAUFFEURS, WAREHOUSEMEN AND HELPERS
OF AMERICA

by _____

EMPLOYER

by _____

THE BOHACK CORPORATION
4825 METROPOLITAN AVENUE
BROOKLYN, NEW YORK 11237

MGMNYAT HSD
2-025779E118002 04/28/75
ICS IPMMTZZ CSP
1 2127262525 MGM TDMT LONG ISLAND CITY NY 04-28 0210P EST
ZIP 11103

western union Mailgram

EXHIBIT "G-1"

TRUCK DRIVERS LOCAL UNION 807 R HENRY
32-43 49 ST
LONG ISLAND CITY NY 11103

THIS MAILGRAM IS A CONFIRMATION COPY OF THE FOLLOWING MESSAGE:

2127262525 TDMT LONG ISLAND CITY NY 35 04-28 0210P EST
FON 2125551212
THE BOHACK CORP, DUPLICATE
48-25 METROPOLITAN AVE
BROOKLYN NY 11237
AS A RESULT OF YOUR VIOLATION OF PARAGRAPH 2 OF THE RIDER AGREEMENT BETWEEN LOCAL 807 AND THE BOHACK CORP YOU ARE HEREBY BEING PROVIDED WITH THE 24 HOUR NOTICE CALLED FOR IN THAT PARAGRAPH
JOSEPH F MANGAN, PRESIDENT LOCAL 807

14:10 EST

MGMNYAT HSB

MGMNYAT HSB
2-020780E125002 05/05/75
ICS IPMMTZZ CSP
1 2127262525 MGM TDMT LONG ISLAND CITY NY 05-05 1250P EST
ZIP 11103

western union Mailgram

UNITED SERVICE

EXHIBIT "G-2"

TRUCK DRIVERS LOCAL UNION 807
32-43 49TH ST
LONG ISLAND CITY NY 11103

THIS MAILGRAM IS A CONFIRMATION COPY OF THE FOLLOWING MESSAGE:

2127262525 TDMT LONG ISLAND CITY NY 42 05-05 1250P EST
PMS JOSEPH BINDER, FONE
BOHACK CORP 48-25 METROPOLITAN AVE
BROOKLYN NY 11237
AS A RESULT OF YOUR VIOLATION OF PARAGRAPH TWO OF THE RIDER AGREEMENT BETWEEN LOCAL 807 AND THE BOHACK CORP. AS OF MAY 5 1975 YOU ARE HEREBY BEING PROVIDED WITH A 24 HOUR NOTICE CALLED FOR IN THAT PARAGRAPH
JOSEPH F MANGAN PRESIDENT LOCAL 807

12:50 EST

MGMNYAT HSB

66 C

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK
BROOKLYN, NEW YORK 11201

CHAMBERS OF
JACOB MISHLER
CHIEF JUDGE

EXHIBIT "H"

July 23, 1975

Roger J. Karlebach, Esq.
Kelley Drye & Warren
350 Park Avenue
New York, New York 10022

Re: Docket No. 74-B-933
The Bohack Corporation et al

Dear Mr. Karlebach:

I signed the order to show cause and struck the provision suspending Judge Parente's preliminary injunction pending the decision in the matter.

My research indicates that there is a serious question as to the jurisdiction of the Bankruptcy Court of actions under Section 301 of the Labor Management Reporting Act (29 U.S.C. §185). This also involves a procedural matter as to whether I may entertain the debtor's motion for an injunction as a complaint in this court.

I suggest that the debtor file a complaint in this court under Section 301 in order to eliminate from my consideration the jurisdictional and procedural problem involved.

Very truly yours,

Jacob Mishler
U. S. D. J.

cc: J. Warren Mangan, Esq.

67a

J. WARREN MANGAN. ESQ.
ATTORNEY AT LAW

32-43 49TH STREET
LONG ISLAND CITY, N.Y. 11103
—
726-600.

EXHIBIT "I"

July 23, 1975

Hon. Jacob Mishler
Emanuel Celler Federal Building
225 Cadman Plaza East
Brooklyn, New York 11201

Re: The Bohack Corporation and Truck Drivers Local Union No. 807, I.B.T., et al.
Bankruptcy No. 74: B 933

Dear Judge Mishler:

I have been advised by your law secretary that the time for serving and filing briefs has been extended to 4:00 p.m. July 28, 1975 and that the return date of the order to show cause is August 1, 1975 at 11:00 a.m.

I hereby respectfully request that the relief requested in the moving papers be augmented to include vacating the preliminary injunction order of Bankruptcy Judge C. Albert Parente entered on July 16, 1975. If a more formal application is necessary, i.e., amending the moving papers, I would appreciate hearing from your office and I will prepare the necessary papers prior to the return date of the motion. I will cover the subject of vacating the order in the brief that I will file on July 28. I would further request that the parties be granted the opportunity to serve and file reply briefs by 4:00 p.m. July 30, 1975.

Today, I notified your law secretary that The Bohack Corporation has served upon Local 807 an order to show cause, executed by Bankruptcy Judge Parente on July 18, 1975, and returnable on July 25, 1975, seeking to disaffirm the labor agreement between Local 807 and Bohack. That contract covers the period between July 1, 1973 and March 31, 1976. No mention of this fact was made in the Kelley, Drye & Warren application for an extension of time to file briefs, although they prepared the moving papers.

continued.../

You have heard the impassioned statement of counsel for Bohack that to sign the temporary restraining order or grant the relief requested by Local 807 would strike the death knell for Bohack. This statement is neither factual nor logical. Local 807 gave Bohack every opportunity to comply with the May 16, 1975 arbitration award and did not picket to enforce that award until it was advised that Bohack intended to terminate all the drivers on July 3, 1975. The work that the truck drivers performed was to be transferred to others in direct violation of the labor agreement and the May 16, 1975 award.

Local 807 does not want to see Bohack out of business and compliance with that contract will not cause Bohack to liquidate. Many other factors may cause that result, but not maintaining an employment relationship with truck drivers that have been employed by The Bohack Corporation for decades longer than its current management.

The Bankruptcy Court and the orders of Judge Parente have been used as a sword against these truck drivers and Local 807. Local 807 seeks, only, to administer its contract with Bohack and to resolve any past, present or future disputes in accordance with the grievance procedure contained in that agreement.

This is exactly what Local 807 did in this dispute. It did not strike when 60 drivers were laid off on December 16, 1974 and their work was transferred to non-employees of Bohack, who used the very same tractors and trailers that the Bohack employees utilized on December 13, 1974. Local 807 filed its grievance before the New York City Joint Local Committee. Local 807 did not strike when an additional 28 drivers were laid off prior to the May 16, 1975 award. That dispute was consolidated with the December 16, 1974 issue. Local 807 did not strike ten (10) days after Bohack received the May 16, 1975 award as it could under the collective bargaining agreement. It struck only when advised that Bohack intended to terminate the remaining 32 employees on July 3, 1975.

On receipt of Bankruptcy Judge Parente's preliminary injunction order Bohack did not maintain a status quo but terminated its remaining 32 truck drivers on July 18, 1975

continued.../

Bohack has disregarded the terms of its labor agreement and its relationship with its truck drivers (some of whom have worked for 35 years for that corporation) in anticipation that its ruthless conduct could not be stopped by the grievance procedure nor by economic sanction for failure to comply with that agreement. To date, their batting average is 100%. They have terminated 120 truck drivers in violation of the labor agreement and the May 16, 1975 arbitration award and its bargaining representative has been restrained from preventing this conduct by an order in direct violation of the provisions of the Norris-LaGuardia Act, issued by a court lacking subject matter jurisdiction.

I repeat that Local 807 is not looking to put Bohack out of business. It seeks to resume normal labor relations with an employer that it has had under contract for over 30 years.

Respectfully yours,

J. Warren Mangan, Esq.

rh
cc: Shaw and Levine, Esqs.
Kelley Drye & Warren, Esqs.

EXHIBIT "J"

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

TRUCK DRIVERS LOCAL UNION NO. 807, INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN AND HELPERS OF AMERICA,	COMPLAINT
Plaintiff,	
-against-	75C 1191
THE BOHACK CORPORATION,	
Defendant.	

The plaintiff by its attorney, J. Warren Mangan, complaining of the defendant and requesting equitable relief, alleges as follows:

1. This is an action for specific performance of the labor agreement between the parties hereto. Jurisdiction is conferred upon this Court by Section 301(a) of the Labor-Management Relations Act, 29 U.S.C. 185(a).

2. The plaintiff is a labor organization as defined in Section 2, Sub-section (5), of the Labor Management Relations Act, 29 U.S.C. 152(5) and has its principal place of business at 32-43 49th Street, Long Island City, New York.

3. That at all times material hereto defendant was and continues to be a corporation existing under and by virtue of the law of the State of New York and maintains its office and principal place of business at 48-25 Metropolitan Avenue, Brooklyn, New York.

4. Defendant is a Debtor in Possession, having filed its original petition pursuant to Chapter XI of the Bankruptcy Act, 11 U.S.C. 701, et seq. , on July 30, 1974.

5. Until December 16, 1974, truck drivers employed by defendant and represented by plaintiff, pursuant to a labor

agreement with a commencement date of July 1, 1973 and an expiration date of March 31, 1976, made all deliveries of groceries, produce, dairy, meat and bakery to defendant retail stores.

6. On December 16, 1974 and at various times thereafter the defendant has subcontracted that work that was formerly performed by its truck drivers to other persons and thereby substantially reduced work opportunity for its truck driver employees.

7. On December 16, 1974 plaintiff commenced an arbitration proceeding against plaintiff, seeking the return of the aforementioned subcontracted work, in accordance with the terms and conditions of their collective bargaining agreement. See Exhibit "A" annexed hereto.

8. On May 16, 1975 an arbitration award was rendered, which held that the defendant violated Article 32 of the aforementioned collective bargaining agreement and ordered defendant to "cease and desist, forthwith, from having its bargaining unit work subcontracted out..." See Exhibit "B" annexed hereto.

9. On or about May 27, 1975 plaintiff moved to confirm the May 16, 1975 award in a proceeding instituted in the Supreme Court of the State of New York, County of Queens. On or about June 5, 1975 defendant removed that proceeding from the State Court to this Court. The motion for confirmation of said award has not as yet been heard by this Court.

10. On July 16, 1975 the defendant obtained a preliminary injunction from Bankruptcy Judge C. Albert Parente enjoining the plaintiff, and other non-appearing persons "from conducting a strike, walkout, work stoppage, or establishing a picket line at [defendant's] various places of business or at the premises of any other party or person doing business with [defendant] during the pendency of this action." Plaintiff is currently

ppealing this order and is before this Court seeking a stay and suspending said order pending the appeal thereof.

11. On July 18, 1975 the defendant terminated the services of all its truck drivers and subcontracted all of the deliveries of groceries, produce, bakery, meat and dairy to persons not employed by defendant.

12. On July 18, 1975 the defendant filed a petition with Bankruptcy Judge C. Albert Parente seeking an order rejecting the collective bargaining agreement between plaintiff and defendant, as an executory contract. This took place prior to the termination of defendant's last thirty-two (32) truck drivers.

13. Section 63(c) of the Bankruptcy Act, 11 U.S.C. 103(c) provides that the rejection of an executory contract shall also constitute a breach of such contract as of the date of the filing of the petition, to wit., July 18, 1975. See Exhibit "C" annexed hereto.

14. Section 301(a) of the Labor Management Relations Act provides that suits for violation of collective bargaining agreements are to be brought in any district court of the United States.

15. That the termination of the thirty-two (32) truck drivers and the subcontracting of the work that those drivers performed, as well as the breach of said collective bargaining agreement, by filing a rejection petition with the Bankruptcy Division of this Court, are matters that must be submitted to arbitration under the terms and conditions of said collective bargaining agreement.

WHEREFORE, plaintiff prays for judgment compelling the defendant to specifically perform its collective bargaining

agreement with plaintiff and to submit any grievances between them to the grievance procedure agreed upon by the parties hereto

Dated: Queens, New York
July 24, 1975

J. Warren Mangan

J. WARREN MANGAN, ESQ.

Attorney for Plaintiff
32-43 49th Street
Long Island City, New York 11103
(212) 726-6009

STATE OF NEW YORK)
) ss.:
COUNTY OF QUEENS)

JOHN G. HOHMANN, being duly sworn, deposes and says:

That your deponent is the Vice President of Truck Drivers Local Union No. 807, International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, the plaintiff in this action; that your deponent has read the foregoing complaint and knows the contents thereof; and that the same are true to deponent's own knowledge.

John G. Hohmann

E. MARTIN MARGOLIS
NOTARY PUBLIC, State of New York
No. 31-4574952
Qualified in Westchester County
Certificate filed in Queens County
Term Expires March 30, 1977

Sworn to before me this
24 day of July, 1975.

EXHIBIT "K"

UNITED STATES DISTRICT COURT

EASTERN DISTRICT OF NEW YORK

TRUCK DRIVERS LOCAL UNION 807, INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN AND HELPERS OF AMERICA,	:	Civil Action No. 75C 1191
Plaintiff,	:	ANSWER AND COUNTERCLAIM
-against-	:	
THE BOHACK CORPORATION,	:	
Defendant.	:	

Defendant THE BOHACK CORPORATION, a debtor in possession, ("Debtor") by its attorneys, Kelley Drye & Warren and Shaw & Levine, for its Answer to the Complaint herein, alleges as follows:

1. It admits the allegations of paragraphs 1 and 2 of the Complaint.

2. It admits the allegations of paragraph 3 of the Complaint except that it denies that its principal place of business is in Brooklyn, New York and states that this place of business is in Queens, New York.

3. It admits the allegations of paragraph 4 of the Complaint.

4. It admits the allegations of paragraph 5 of the Complaint except it denies that prior to December 16, 1974 all of the deliveries to its stores were made by truck

drivers employed by defendant and represented by plaintiff.

5. It denies the allegations of paragraphs 6 and 7 of the Complaint.

6. It denies the allegations of paragraph 8 of the Complaint except that it admits that defendant received the original copy of Exhibit B attached to the Complaint.

7. It admits the allegations of paragraph 9 of the Complaint.

8. It admits the allegations of paragraph 10 of the Complaint except that it denies that any persons enjoined by Judge Parente did not appear in that action, and refers to Judge Parente's preliminary injunction as to the accuracy of the text thereof.

9. It admits that on July 18, 1975 it terminated the services of the truck drivers it employed that day pursuant to its proposed plan of arrangement of creditors and except as so admitted, denies the allegations of paragraph 11 of the Complaint.

10. It admits the allegations of paragraph 12 of the Complaint.

11. The allegations of paragraphs 13 and 14 of the Complaint set forth conclusions of law to which the defendant does not respond.

12. It denies the allegations of paragraph 15 of the Complaint except it admits that the Union's claim that defendant has subcontracted work in violation of the

collective bargaining agreement has not been and may upon the approval of the Bankruptcy Court be submitted to an arbitration tribunal with jurisdiction of the subject matter under the terms and conditions of said collective bargaining agreement.

FIRST AFFIRMATIVE DEFENSE

13. The Complaint fails to state a claim on which relief may be granted.

COUNTERCLAIM

14. Defendant repeats and realleges its answers to paragraphs 1 through 4 of the Complaint with the same force and effect as if more fully set forth herein.

15. Defendant is engaged in an industry affecting commerce within the meaning of Section 301(a) of the Labor Management Relations Act of 1947, as amended, 29 U.S.C. §185(a).

16. At all times relevant there existed and there still exists between the parties to this action a collective bargaining agreement, a true copy of which is attached as Exhibit A to the Complaint.

17. Since May of 1975 and to date there exists between the parties a dispute as to whether the defendant's liquidation of its warehousing and distribution operation pursuant to a proposed plan of arrangement constitutes a subcontract of unit work prohibited by Article 32 of the parties' agreement.

18. This dispute is arbitrable pursuant to Article 8, Section 1 of said agreement which contains an agreed upon exclusive method for its resolution through arbitration.

19. The defendant is willing to submit said dispute to this arbitration procedure if permitted by the Bankruptcy Court.

20. The said collective bargaining agreement between the parties contains a no-strike clause barring plaintiff from conducting a strike, walkout, or work stoppage, or establishing a picket line at any of defendant's various places of business during the term of said agreement.

21. On June 30, 1975 the plaintiff and its members conducted and unless restrained will again conduct an unlawful strike and unlawful picketing at the defendant's terminal and at sixteen (16) of its retail stores in violation of the parties' collective bargaining agreement.

22. Defendant repeats and realleges its answer to paragraph 10 of the Complaint with the same force and effect as if more fully set forth herein.

23. As a result of these unlawful acts, substantial and irreparable injury and interference with defendant's property has occurred and will continue to occur if the plaintiff resumes such unlawful acts. Such irreparable injury includes the loss of substantial revenues, and more significantly the diversion of defendant's customers to competitors with consequent irrevocable injury to defendant's

goodwill, all of which damages are impossible to determine with precision.

24. Damages are an inadequate remedy for the injury which defendant has suffered and will continue to suffer unless plaintiff's unlawful acts are restrained.

WHEREFORE, defendant prays for a judgment permanently compelling plaintiff to specifically perform its collective bargaining agreement with defendant and to cease and desist from its violation thereof and more particularly enjoining and restraining plaintiff and all of its members, officers, employees and agents and all other persons in active concert or participation with them from engaging in or continuing or organizing, inducing or encouraging others to engage in or continue any strike, walkout, work stoppage or any other cessation of work, or establishing any picket line at defendant's various places of business or at the premises of any other person or party with whom defendant does business.

Dated: August 1, 1975

KELLEY DRYE & WARREN

By _____
(a member)

350 Park Avenue
New York, New York 10022
(212) PL 2-5800

SHAW & LEVINE
770 Lexington Avenue
New York, New York 10021
838-7127

Attorneys for Defendant

80a

STATE OF NEW YORK)
: ss.:
COUNTY OF Kings)

FRANKLIN E. KNIBEL, being duly sworn, deposes and says:

That your deponent is the Chairman of The Bohack Corporation, the defendant in this action; that your deponent has read the foregoing answer and counterclaim and knows the contents thereof; and that the same are true to deponent's own knowledge.

Franklin Knibel
Chairman

Sworn to before me this
1st day of August, 1975.

Notary Public

JOSEPHINE ROBINSON
[illegible] York
No. [illegible]
Qualified in Queens County
Term Expires March 30, 1975

EXHIBIT "L"

UNITED STATES DISTRICT COURT

EASTERN DISTRICT OF NEW YORK

TRUCK DRIVERS LOCAL UNION NO. 807, INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN AND HELPERS OF AMERICA,	:	Civil Action No. 75C 1191
Plaintiff,	:	ORDER TO SHOW CAUSE WITH TEMPORARY RESTRAINING ORDER
-against-	:	
THE BOHACK CORPORATION,	:	
Defendant.	:	

Upon reading and filing the annexed affidavit of Joseph Binder sworn to on June 30, 1975, the transcript of the sworn testimony of witnesses at a hearing on June 30, 1975 before Hon. C. Albert Parente, Bankruptcy Judge in Bankruptcy No. 74 B 933, and the pleadings, affidavits and all papers heretofore filed herein, let plaintiff show cause before this Court on the day of August, 1975, at o'clock in the forenoon of that day, at the United States District Court, 225 Cadman Plaza East, Brooklyn, New York

WHY an order should not be made in this proceeding restraining and enjoining the plaintiff from conducting a strike, walkout, or work stoppage, or establishing a picket line at defendant's various places of business or at the premises of any other party or person doing business with defendant during the pendency of this action.

Sufficient cause having been shown therefor, and

it appearing that plaintiff is about to commit the acts complained of, to the irreparable injury of defendant, pending the hearing and determination of this motion, plaintiff is hereby restrained and enjoined from conducting a strike, walkout, or work stoppage or establishing a picket line at defendant's various places of business or at the premises of any other party or person doing business with defendant.

Let personal service of a copy of this order and the papers on which it is based on the plaintiff or its attorneys on or before the day of August, 1975 be deemed good and sufficient service.

Dated: Brooklyn, New York
August , 1975

UNITED STATES DISTRICT JUDGE

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

----------x

In the Matter of Bankruptcy No. 74B933

THE BOHACK CORPORATION,

Debtor.

----------x

THE BOHACK CORPORATION,

Plaintiff, AFFIDAVIT

-against-

TRUCK DRIVERS UNION LOCAL 807,
INTERNATIONAL BROTHERHOOD OF TEAMSTERS,
et al,

Defendants.

----------x

STATE OF NEW YORK)
)SS:.
COUNTY OF KINGS)

JOSEPH BINDER, being duly sworn, deposes and says:

I am the Executive Vice-President of THE BOHACK CORPORATION, the plaintiff and Debtor in Possession herein. I submit this affidavit in support of plaintiff's application for a temporary restraining order and preliminary injunction of the strike which commenced this morning at :00 A.M.

The conduct which we seek to enjoin is a strike, either authorized or "wildcat", by members of TRUCK DRIVERS LOCAL 807, INTERNATIONAL BROTHERHOOD OF TEAMSTERS, who are employed by

BOHACK as drivers of trucks that pick up merchandise from wholesale grocers and transport it to the various BOHACK stores.

The background of the proposed action and our application to enjoin it is fairly simple. One of the costliest items is the debtor's operations prior to the filing of the original petition under Chapter XI was the operation of the warehouses at Bohack Square. As part of the proposed Plan of Arrangement and since approximately November 1974, BOHACK has discontinued that operation and purchased its groceries directly from wholesale grocers. Of the approximately 90 stores BOHACK is operating, about 60 located largely in Nassau and Suffolk Counties were serviced by Bozzuto's Inc., located in Cheshire, Connecticut; and about 27 stores located largely in Brooklyn and Queens were serviced by Filigree Foods, Inc., of Totowa, New Jersey. The members of Local 807 did all of the driving in the operation, taking Bohack trucks to the various suppliers, and then delivering the merchandise to the individual Bohack stores.

On or about May 1, 1975, Filigree filed its own Chapter XI proceeding in The United States District Court for New Jersey, and a Receiver was appointed. Filigree stopped supplying merchandise to BOHACK and they will not supply us in the future. Inasmuch as almost one-third of the operating BOHACK stores are involved, I contacted Bozzuto's Inc. to determine whether they woul

expand their operation to cover all our stores. I was told that the same considerations of logistics that limited the initial course of business still applied and that they could not accommodate us, although they wished to help, and thus agreed to supply seven stores on a temporary basis.

I immediately sought other sources of grocery supply, and the only one that was economically feasible turned out to be KRASDALE FOODS, INC., which started supplying us on May 5, 1975. KRASDALE, however, has its own drivers, who belong to LOCAL 138, INTERNATIONAL BROTHERHOOD OF TEAMSTERS, and deliveries to BOHACK stores will be made by those drivers under the terms of the arrangement between BOHACK and KRASDALE, the only arrangement available to BOHACK.

BOHACK's drivers, naturally unhappy about the proposal, and various union officials have indicated that a strike may occur at any moment, as the drivers feel that they are being forced into vacations and otherwise injured. On May 15, 1975, plaintiff was served with a 24 hour notice, under Section 2 of the Rider Agreement to the 1973-1976 Area Wide Master Freight Agreement (Exhibits "A" and "B"). On May 16, 1975, the JOINT LOCAL COMMITTEE FOR NEW YORK CITY, upheld the Union's position and thereafter the Union sought, by motion returnable in the Supreme Court of the State of New York, to confirm such award.

The application was removed to the United States District Court for the Eastern District of New York pursuant to the applicable federal rules of civil procedures and the award has not as yet been confirmed. BOHACK has consistently taken the position that the Local Committee was without jurisdiction to render such award and that the issue rather must be resolved by the National Grievance Committee inasmuch as an interpretation of the National Agreement is involved.

Notwithstanding the fact that this award has not yet been confirmed, the Union has bypassed its own contractual procedure in the desire to push BOHACK to the wall on this matter.

It is respectfully submitted that any strike by the drivers would effectively shut down the Debtor and destroy any chance of turning it into a profitable operation and implementing the proposed Plan of Arrangement now under consideration by BOHACK's creditors. The irreparable nature of such injury, as well as its immediate damage is so obvious that it need not be belabored by me in this application.

In this regard, it should be noted that defendants will not be harmed if the injunction is issued. There is specific machinery for the resolution of just such a jurisdictional dispute within the INTERNATIONAL BROTHERHOOD OF TEAMSTERS and Article 30 of the Area Wide Master Freight Agreement sets out the method for settling such a dispute. It further provides:

"Pending such termination, the Employer shall not be precluded from seeking appropriate legal or administrative relief against work stoppages or picketing in furtherance of such dispute."

Moreover, I am advised by counsel that where a jurisdictional dispute between two labor unions is involved, and the Debtor is an innocent bystander, as is the situation here, the Bankruptcy Court has the power to enjoin a strike or the establishment of a picket line. (See, IN THE MATTER OF CLEVELAND AND SANDUSKY BREWING CO., 11 F. Supp. 198, 29 Am. B.R. (N.S.) 393 (N.D. Ohio 1935). It is clear that this combination of merit and irreparable injury requires the granting of this application.

The immediate damage to BOHACK is immense. As of 9:00 o'clock this morning, June 30, 1975, there were 40 undelivered truckloads of meat, groceries and other items in the Bohack Terminal but there were pickets not only at the Bohack Terminal but at the following stores:

143-66 243rd Street, Rosedale
802 Manhattan Avenue, Brooklyn
249-26 Northern Boulevard, Littleneck
66-26 Metropolitan Avenue, Middle Village
Hillside and Grancis Lewis Boulevard, Hollis
7420 Third Avenue, Brooklyn
82-15 151st Street, Howard Beach
2475 Jericho Turnpike, Garden City Park
Rocky Point
571 Grandview Avenue, Ridgewood
149-28 14th Avenue, Whitestone
176-64 Union Turnpike, Flushing
158 Gates Avenue, Ridgewood
97-15 Metropolitan Avenue, Forest Hills
8420 Broadway, Elmhurst
79-15 Elliot Avenue, Elmhurst

Moreover, Bozutto's drivers have been told about the pickets and have been instructed not to cross the picket lines at any stores. In fact, the Union is attempting to close out the entire BOHACK chain.

Each day's loss of business represents $500,000.00 in loss of cash flow to BOHACK.

If the strike is allowed to continue, the Debtor will cease to exist as an operating entity.

WHEREFORE, it is respectfully requested that a preliminary injunction issue pending the outcome of this litigation, and that pending the hearing of the motion the Court temporarily restrain the defendants from committing the acts complained of.

Joseph Binder

Sworn to before me this 30th
day of June, 1975.

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK
----------x

In the Matter of

ORDER TO SHOW CAUSE WITH TEMPORARY RESTRAINING ORDER,

THE BOHACK CORPORATION,

Plaintiff,

--against-

TRUCK DRIVERS UNION LOCAL 807, INTERNATIONAL BROTHERHOOD OF TEAMSTERS, et al,

Defendants.

----------x

U.S. District Court
Jamaica, New York

June 30, 1975
2:30 P.M.

HEARING

BEFORE: HON. C. ALBERT PARENTE,
Bankruptcy Judge

* * *

AAA-AA
FLORENCE TRAIN & ASSOCIATES
CERTIFIED SHORTHAND & STENOTYPE REPORTERS
LEGAL STENOGRAPHIC SERVICE - TAPE TRANSCRIPTION
82-20 141ST STREET
BRIARWOOD, JAMAICA, N.Y. 11435
TEL. 544-3721

A P P E A R A N C E S :

J. STANLEY SHAW, ESQ.
Attorney for Plaintiff
770 Lexington Avenue
New York, New York 10021
BY: JESSE I. LEVINE, ESQ.,
Of Counsel.

KELLEY, DRYE & WARREN, ESQS.
Attorneys for Plaintiff
350 Park Avenue
New York, New York 10022
BY: MARC L. SILVERMAN, ESQ.,
Of Counsel.

J. WARREN MANGAN, ESQ.
Attorney for Defendant
32-43 49th Street
Long Island City, New York 11103

* * *

THE COURT: Let the record show that this is a preliminary hearing to ascertain whether the Court should sign a temporary restraining order in the matter of the Bohack Corporation, Debtor and Plaintiff, against Truck Drivers Union Local 807, International Brotherhood of Teamsters, Defendants.

I will hear from the attorney for the Debtor, Plaintiff.

MR. LEVINE: Your Honor, with respect to the two issues involved herein, the question of the Court's jurisdiction, the question of

award which said to cease and desist on the activity that you've been engaged in since December of 1974.

THE COURT: This Court has the authority to set aside--

MR. MANGAN: (Interp'g.) There is no precedent at all for it, Your Honor.

THE COURT: I am establishing a precedent by undertaking an appeal to a higher authority.

MR. MANGAN: It is clear, regardless of the position you take with regard to the arbitration award, that this Court does not have jurisdiction to render an injunction. It is without jurisdiction by way of Section 104 of the Norris-LaGuardia Act.

J O S E P H B I N D E R , called as a witness herein, after first having been duly sworn by The Honorable C. Albert Parente, testified as follows:

EXAMINATION BY MR. LEVINE:

Q Are you employed by the Bohack Corporation?

A Yes, I am the Executive Vice President of the Bohack Corporation.

Q Are you involved in a labor matter?

A I am.

Q As a matter of fact, in December of 1974, when Bohack entered into an agreement with Filigree Foods to undertake the supply of wholesale groceries to Bohack--

A (Interp'g.) Sometime prior to December, 1974 we entered into a contract.

Q Did there come a time during that approximate period when you were approached or notified by any officer of the Defendant union as to objection to the process with respect to either Filagree, Shopwell or any other group?

A In December, 1974, we, Bohack, closed its produce and dairy warehouses and contracted to purchase such goods from Shopwell, Inc. The arrangment with Shopwell was that they deliver the produce from the warehouses directly to the Bohack stores.

Shopwell did, and presently still has Local 277 of the International Teamsters Union.

At that point, Bohack was summoned to the New York City Committee Trucking Association and, after a discussion at this meeting, it was decided by the panel to refer this as a jurisdictional dispute to the Joint Counsel. It was alleged that Local 907

wanted the work that was being done by Local 277, which was the Shopwell union, and, at that point, this was referred to Joint Counsel 16, Queens, as a jurisdictional problem between the two I.B.T. locals.

Q Were you advised by Joint Counsel 16?

A No, I was not.

Q When was the first time you knew that the dispute was being reopened?

A About April 30.

Q That was '75?

A '75, I'm sure.

In the interim, groceries were being purchased F.O.B. by these warehouses and being picked up by 807 drivers. On April 30, Filigree went into Chapter 11. There is a limited amount of wholesale grocers in New York, but Bohack had no choice but to go to Krasdale which also has a contract with 147, and Krasdale's management would only take on the supplying of Bohack stores--approximately 50 stores, on an F.O.B. store delivery basis.

Q When you say you went to Krasdale, did you approach any other wholesaler?

A We approached Met Foods, White Cross

Foods, and we approached Associated Foods, who also filed Chapter 11.

Q Was your approach to all those wholesalers to let Local 807--your approach to the wholesalers--was it to let Local 807 pick up at the warehouses to deliver to the stores with no objection of the union and the same with the associated union?

A Yes.

Q Are there any other suppliers in the metropolitan area that you could have gone to other than Krasdale, Met, and Associated?

A The only other one is Bizzuto's, in Cheshire, Connecticut, which is a geographical problem for Bohack as far as the dollars involved.

Q There are no other wholesale grocers in New York?

A Referable to Bohack, no.

Q Did Met Foods and White Cross agree to supply Bohack?

A They did, we have a credit problem with them. When Associated went to Chapter 11, they told us they have no more supplies.

Q Was Associated able to fulfill your needs?

A No, they did not.

Q Did there come a time shortly after April 30th, 1975, when you received notice that the union sought to reopen the matter?

A Yes, we got a notice of the meeting. And, I went down with our Chairman of the Board, Mr. Noble.

Q Did you object to the jurisdiction of the Local Committee at that time?

A At the outset of the meeting, the Chairman of the panel thought that we were in the wrong jurisdiction, as we did, and we objected.

The panel went ahead with the discussion when we left, and then we were informed of the award a day or two later.

Q Approximately what volume of business does Bohack do at the present time on a daily basis?

A Well, the average volume is about 4.2, to 4.3 million dollars per week. The volume fluctuates by the day; e.g., a Monday would be about $3,500 and in days toward the latter part of the week, the volume increases.

Q So, that if the strike went on until the end of the week, it would be more?

96 a

A If the strike goes on past today, Bohack's loss would be beyond reproach.

Q Can you tell me what deliveries have been made today of merchandise to Bohack stores, if any?

A Well, the basic merchandise comes out of Bohack Square. Our meat and delicatessen is delivered by 807 drivers.

I have forty trailers of merchandise that is not moving and since the strike has started there have been various confrontations in at least two stores, one on Fresh Pond Road, where the police had to be called by Local 807 pickets for interfering with the drivers of the other stores of Bohack, in trying to force them into not crossing the picket lines and not drive for the Bohack stores.

Q Are they being held back?

A Bohack is essentially out-of-business today because of the fact of forty trailer loads of merchandise sitting in Bohack Square.

THE COURT: Is any of this merchandise perishable?

THE WITNESS: The meat can sit for a limited period of time before deterioration sets

in.

The other items, Your Honor, are all fresh items.

MR. MANCAN: It is my understanding that all of this is in Bohack stores and all of the warehouse employees who load these trailers are available to unload them, if the case came to getting the trailers loaded back into the refrigeration.

It is my understanding that effective July 7, which is next Monday, the meat is no longer going to be delivered out of Bohack Square by the employees of Bohack but is going to go the way of the other work, to non-employees of Bohack, in direct contravention and in opposition of what that award of May 16 says.

This is not a matter of all parties standing pat. In fact, Monday, July 7, or thereabouts, there is going to be activity taken by the company as in opposition and direct violation of the arbitration award, and it is going to be at the expense of another ten to fifteen employees of Bohack, working under the same contract.

98a

He said to you that the meat that was in the warehouse was being delivered by local 807 drivers who are employees of Bohack. They are no longer performing that work. There is going to be no Bohack.

The parties are not going to be in a position of status quo. In fact, the company intends, as of Monday, to discontinue the contract of its employees for delivery of meat and to direct that work elsewhere.

The failure of the employer to comply with an arbitration award, but continues the practice, and on Monday there will be a further continuation and what the Court will be doing is put these people in a position where they are unable to take the economic recourse, having complied in every way to the contract.

THE COURT: I ask you again, Counselor, in your expertise in the labor field, does economic recourse contemplate a strike?

MR. MANGAN: I said to you, Your Honor, I am reading from the contract and the prohibitions that are in the agreement, that neither party can take certain action. Those prohibition

are lifted if the employer fails to comply with the arbitration award within ten days after it is rendered.

I refer to Article 46, Section 1 and I refer you to those prohibitions that there shall be no strike, lock-out, tie-up, work stoppage, or legal proceedings, and within ten days, if there has been no compliance, then either party can resort to those activities and they include, yes, Your Honor, they include strike.

THE COURT: Let's have the record clear.

It is the contention of counsel that they merely went there to test the jurisdiction. They appeared specifically and objected to jurisdiction?

MR. MANGAN: Counsel was not there, Your Honor. I was there. I saw what transpired. The Chairman of the panel was the only one who raised the point. The employer never even raised the point and it was after that being raised, then, the employer went right ahead, submitted to the agreement and

procedure and argued out its position and there was no determination that was made.

I don't think there is any question in anyone's mind that you don't have to walk out of a meeting once you have conceded jurisdiction. You are there, if you submit to the jurisdiction, and you argue on behalf of your client. You never moved to stay the arbitration.

They never moved to arbitrate the award. They wanted to get the arbitration proceeding then. They argued the proceeding and we decided to get a confirmation of the award, then the employer comes forward and says we don't have any right under the no-strike provision.

We can't have it both ways. Either there is this Section 1-A or then we are entitled to continue with this economic activity and this Court is without jurisdiction to enjoin it.

MR. LEVINE: In the interpretation of the Norris-LaGuardia Act, we objected to jurisdiction. We went to the meeting and objected to the jurisdiction immediately thereafter. That very issue is being tested.

101a

THE COURT: Do you have any documentary evidence in support of the facts?

MR. LEVINE: We have the testimony of Mr. Binder.

THE WITNESS: The first time, in December or January, I was specifically told, "Don't bring any employees," and that the only ones allowed in the room were the principals.

The first time, I went myself; the second time that I went, in May, I knew that I had this problem so I went with our Chairman of the Board, knowing I wasn't allowed to bring an employee.

MR. MANGAN: When was this?

THE WITNESS: On the day of this proceedi and I notified you that I would be there.

The point I'm trying to make is that I thought you were there as a representative of the union, not as an attorney.

When I left there, then I was told. I didn't believe you were going to be there as an attorney.

MR. MANGAN: Am I anything but the attorn for Local 807?

THE WITNESS: I don't know.

THE COURT: We are moving ahead beyond the aspect of what we have before us.

The Court's opinion, after having carefully weighed the arguments on both sides, that since the contract contained an arbitration provision which was entered into prior to bankruptcy, and in behalf of the union was not judicially sanctioned, the issue was submitted to arbitration without the consent of the trustee or upon the necessary authorization of the Bankruptcy Court. Consequently, the Court finds that the award rendered by the New York City Joint Local Committee was bereft of validity and being in contravention to Section 26 of the Bankruptcy Act as superceded by Rule 919, Subdivision B.

Accordingly, the Court finds no bars to the signing of a temporary restraining order in view of the no-strike provision contained in the collective bargaining agreement between the parties.

I grant the parties an immediate right of appeal without the formal notice, if the District Court will entertain such a motion.

In other words, permission is orally given under Rule 801, Notice of Appeal.

This matter, in view of its gravity, may be brought before a District Court for immediate review and I would ask the union corporation, until the District Court either affirms or reverses my decision, to comply with the order of this Court restraining a further action by the union.

MR. MANGAN: Your Honor, I think you should sign an Order setting down a date for a hearing on the preliminary injunction.

THE COURT: I assume there will be immediate review so that we can set it down on any date.

The only issue before me is the temporary restricting order which I have just signed.

(Whereupon, the hearing was concluded.)

* * *

CERTIFICATE

STATE OF NEW YORK)
COUNTY OF QUEENS) SS.:

I, JOSEPHINE LONGO, a shorthand reporter and Notary Public within and for the State of New York, do hereby certify:

That the minutes hereinbefore set forth are a true and accurate record of Hearing.

I further certify that I am not related to any of the parties to this action by blood or marriage; and that I am in no way interested in the outcome of this matter.

IN WITNESS WHEREOF, I have hereunto set my hand this 9th day of July, 1975.

Josephine Longo
JOSEPHINE LONGO

* * *

EXHIBIT "M"

UNITED STATES DISTRICT COURT

EASTERN DISTRICT OF NEW YORK

- x

TRUCK DRIVERS LOCAL UNION NO. 807, INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFERS, WAREHOUSEMEN AND HELPERS OF AMERICA,

Plaintiff,

- against -

THE BOHACK CORPORATION,

Defendant.

: Civil Action

: No. 75C 1191

: STIPULATION

- x

It is hereby stipulated by and between the undersigned attorneys for the parties hereto that the application to reject the collective bargaining agreement between the parties hereto presently pending before Bankruptcy Judge Parente in Bankruptcy No. 74:B933 be adjourned and stayed until a date convenient to the parties and their attorneys after the date of the decision of the United States Court of Appeals for the Second Circuit in the case of Shopmen's Local Union No. 455, International Association of Bridge Structural and Ornamental Iron Workers, AFL-CIO v. Kevin Steel Products, Inc., 381 F. Supp 338 (S.D.N.Y. 1974);

It is further stipulated that should Judge Parente or any other judge of the Bankruptcy Court determine that the aforesaid collective bargaining agreement be rejected and should such determination not be reversed in any appeals which may be taken therefrom, such rejection determination shall have the same effect as if it had been made on

a date, that number of calendar days after July 25, 1975 as shall correspond to the number of calendar days between the date that the Bankruptcy Judge shall open the hearing on the rejection petition and the date that the Bankruptcy Judge shall render his decision rejecting said agreement, inclusive.

KELLEY DRYE & WARREN
Attorneys for The Bohack Corporation

By _____

J. WARREN MANGAN
Attorney for Local 807

_____

Dated: July 28, 1975

EXHIBIT "N"

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

----------x

In the Matter of

THE BOHACK CORPORATION,

Bankrupt.

Bankruptcy No.

74 B 933

----------x

SUMMONS AND NOTICE OF TRIAL

THE BOHACK CORPORATION,

Plaintiff,

-against-

TRUCK DRIVERS UNION LOCAL 807, INTERNATIONAL BROTHERHOOD OF TEAMSTERS, et al.,

Defendants.

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TO THE ABOVE-NAMED DEFENDANTS:

You are hereby summoned and required to serve upon SHAW AND LEVINE, plaintiff's attorney, whose address is 770 Lexington Avenue, New York, New York, a motion or an answer to the complaint which is herewith served upon you, on or before November 17, 1975, and to file the motion or answer with this court not later than the second business day thereafter. If you fail to do so, judgment by default will be taken against you for the relief demanded in the complaint.

You are hereby notified that trial of the proceeding commenced by this complaint has been set for November 17, 1975

107A

at 9:30 o'clock a.m., in Room 445, 900 Ellison Avenue, Westbury, New York.

C. ALBERT PARENTE

C. ALBERT PARENTE

By: _____

Address: _____

_____

Date of issuance: November 7, 1975

EXHIBIT "O"

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

----------x

In the Matter of

Bankruptcy No. 74B933

THE BOHACK CORPORATION,

COMPLAINT

Debtor.

----------x

THE BOHACK CORPORATION,

Plaintiff,

-against-

TRUCK DRIVERS UNION LOCAL 807, INTERNATIONAL BROTHERHOOD OF TEAMSTERS, et al.,

Defendants.

----------x

THE BOHACK CORPORATION, debtor-in-possession, by its attorneys, SHAW AND LEVINE, respectfully alleges as follows:

1. That a petition for an arrangement under Chapter XI of the Bankruptcy Act was filed by the Debtor herein on July 30, 1974 and that applicant has continued in possession of its property by order of this Court dated July 30, 1974.

2. That as required by Rule 11-11 of the Chapter XI Rules, the Debtor's petition for an arrangement herein was accompanied by a statement of the Debtor's executory contracts, one of which was the contract between THE BOHACK CORPORATION and TRUCK

DRIVERS UNION LOCAL 807, INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMENT AND HELPERS OF AMERICA (hereinafter referred to as Local 807).

3. Said contract was entered into on July 1, 1973 to run until June 30, 1976, and the applicant desires, in the best interests of the estate, permission of this Court to reject said executory contract.

4. The reason applicant seeks to reject said contract is that it is onerous and burdensome to the Debtor and substantial savings and potential profits can be realized and effected if such contract is rejected.

5. As part of its Plan of Arrangements, THE BOHACK CORPORATION, is subleasing or selling portions of its terminal at Bohack Square and will deal directly with suppliers who will deliver to Bohack stores rather than a central warehouse.

6. The discontinuation of the warehousing operation is an integral part of the proposed plan in that the debtor can become profitable in its store operations, which operations have been greatly reduced since the filing of the original petition herein, if the costly warehouse and trucking operations now conducted by the debtor can be eliminated. Inasmuch as the wholesale suppliers whose agreements to sell to the debtor have been approved by this Court can deliver directly to the stores much more cheaply than the present utilization

of Local 807 drivers, there is placed on the debtor a substantial cash flow drain which can be eliminated by rejection of the Local 807 contract, and concurrently, discontinuing the warehouse operation.

7. Additionally, the proposed plan of arrangement requires disposition of certain real property assets of the debtor, including portions of the terminal at Bohack Square. Rejection of this contract and the warehouse operation will allow the needed flexibility to carry out that part of the plan.

8. Unless the foregoing two goals can be achieved, no successful plan of arrangement can be made and fulfilled. Rejection of Local 807's contract is necessary to achieve those goals.

9. The savings and the potential profits will inure to the benefit of the general creditors of the estate of the Debtor and will make feasible the carrying out of the Plan of Arrangement which is now before the Creditors' Committee for final agreement before presentation for confirmation.

WHEREFORE, applicant prays for judgment rejecting the executory contract between the debtor and Local 807, dated

111a

July 1, 1973, and granting such other and further relief as to the Court may seem just and proper.

Dated: New York, New York
November 14, 1975

SHAW AND LEVINE
Attorneys for Debtor
770 Lexington Avenue
New York, New York 10021
(212) 838-7127

EXHIBIT "P"

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

In the Matter of THE BOHACK CORPORATION, Bankrupt.	BANKRUPTCY NO. 74-B-933
THE BOHACK CORPORATION, Plaintiff, -against- TRUCK DRIVERS UNION LOCAL 807, INTERNATIONAL BROTHERHOOD OF TEAMSTERS, et al., Defendants.	ANSWER

Defendant, Truck Drivers Local Union No. 807, International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, by its attorney, J. Warren Mangan, for its Answer to the Complaint herein alleges as follows:

1. It admits the allegations set forth in Paragraph 1 of the Complaint.

2. It denies knowledge or information sufficient to form a belief as to the truth of the allegations set forth in Paragraph 2 of the Complaint.

3. It denies all of the allegations contained in Paragraph 3 of the Complaint, except it admits that the plaintiff

and defendant are parties to a collective bargaining agreement covering the terms and conditions of employment for plaintiff's drivers, and that the term thereof is July 1, 1973 through March 31, 1976.

4. It denies all of the allegations contained in Paragraph 4 of the Complaint.

5. It denies knowledge or information sufficient to form a belief as to the truth of the allegations set forth in Paragraph 5 of the Complaint.

6. It denies knowledge or information sufficient to form a belief as to the truth of the allegations set forth in Paragraphs 6 and 7 of the Complaint, except it denies all the allegations contained therein regarding the trucking operation.

7. It denies all of the allegations contained in Paragraphs 8 and 9 of the Complaint.

FOR FURTHER SEPARATE AND AFFIRMATIVE DEFENSES DEFENDANT SAYS:

8. The Complaint fails to state a claim against defendant upon which the requested relief can be granted.

9. That the debtor in possession is a party to the prevailing collective bargaining agreement between plaintiff and defendant by expressly assuming or implicitly adopting its terms and, therefore, is subject to the exclusive termination restrictions set forth in Section 8(d) of the Labor-Management Relations Act, 1947, as amended.

10. That the equities are decidedly in favor of maintaining and enforcing the collective bargaining agreement between plaintiff and defendant.

WHEREFORE, defendant demands that the Complaint be dismisses and that the Court award to the defendant its cost and attorney's fees for the defense of this action.

J. Warren Mangan

J. Warren Mangan, Esq.
Attorney for Defendant
32-43 49th Street
Long Island City, New York 11103

STATE OF NEW YORK)
COUNTY OF QUEENS) ss:.

Rose Henry, being duly sworn, deposes and says: deponent is not a party to the action, is over 18 years of age and resides at 32-43 49th Street, Long Island City, New York. On the 21 day of November, 1975 deponent served the within Answer upon Honorable C. Albert Parente, Shaw & Levine, Esqs, Kelley, Drye & Warren, Esqs. Oherbourg, Steindler, Houston & Rosen, Esqs. and Finkel, Nadler & Goldstein, Esqs. at United States District Court, 900 Ellison Avenue, Westbury, New York 11590, 770 Lexington Avenue, New York, New York 10021, 350 Park Avenue, New York, New York 10022, 230 Park Avenue, New York, New York 10017 and 401 Broadway, New York, New York 10013 respectively, the addresses designated by said parties for that purpose by depositing a true copy of same enclosed in a post-paid properly addressed wrapper, in a official depository under the exclusive care and custody of the United States Postal Service within the State of New York.

Rose Henry

Sworn to before me this
21 day of November, 1975.

J. WARREN MANGAN
NOTARY PUBLIC, State of New York
No. 31-2504951
Qualified in Westchester County
Certificate filed in Queens County
Term Expires March 30, 1977

EXHIBIT "Q"

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK
- - - - - - - - - - - - - - - - -x

TRUCK DRIVERS LOCAL UNION 807, etc.,

Plaintiff,

- against -

THE BOHACK CORPORATION,

Defendant.

- - - - - - - - - - - - - - - - -x

74-B-933
75-C-905
75-C-1191

Memorandum of Decision and Order

In the Matter of the

BOHACK CORPORATION,

Debtor.

- - - - - - - - - - - - - - - - -x

November 19, 1975

MISHLER, CH. J.

A number of issues arising out of the decision of the Bohack Corporation (Bohack) to discontinue its warehouse and distribution terminal and terminate the employment of its drivers, members of Truck Drivers Union Local 807, International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America (Union), are presented to this court.

Bohack operates a chain of retail supermarkets

throughout Brooklyn, Queens, Nassau, and Suffolk Counties. On July 30, 1974, Bohack filed a petition for arrangement under Chapter XI of the Bankruptcy Act. At the time of filing of the petition, Bohack had approximately 150 retail supermarkets and employed approximately 3,000 persons. It operated a warehouse and terminal in Brooklyn, employing approximately 150 drivers. Bohack was and is in contractual relation with the Union under a labor agreement commencing on July 1, 1973 and expiring on March 31, 1976. The Union has represented Bohack's truck drivers for more than thirty years.

Elimination of the warehouse would result in a net saving of over $500,000. The proposed plan of arrangement provided for a discontinuance of the warehouse and the termination of employment of its drivers. In approximately November, 1974, it started to purchase some of its merchandise directly from wholesale grocers. Some drivers were retained under arrangements where Bohack drivers picked the merchandise up at the vendor's place of business, and meat and meat products continued to be delivered from the warehouse until July, 1975. Some jobs were terminated in December, 1974, and all employment of the Union's 32 truck drivers terminated in July, 1975.

The labor agreement is in two parts: the National Master Freight Agreement (Master Agreement) and a Supplemental Agreement covering the New York-New Jersey area.

Article 8, Section 1(a) of the Master Agreement provides that "All factual grievances or questions of interpretation arising under the provisions of the Supplemental Agreement (or factual grievances under the National Master Agreement) shall be processed in accordance with the grievance procedure of the applicable Supplemental Agreement."

Section 1(b) of Article 8 provides that:

> "Any matter which has been referred pursuant to Section 1(a) above, or any question concerning the interpretation of the provisions contained in the Master Agreement shall be submitted to a permanent National Grievance Committee . . . ."

The Supplemental Agreement recognizes the authority of the National Grievance Committee to pass on the issue of interpretation of the contract (Article 45, Section 8). Article 46, Section 1(a), establishes the authority of the Joint Local Committee to determine disputes over the discharge of an employee.

On December 16, 1974, the Union served notice of arbitration before the New York City Joint Area Local Committee of the issue involving the subcontracting provision of the

Master Agreement (Article 32).[1]

The position of the Union as stated in its notice of arbitration is that:

> "As of December 16, 1974, the Bohack Corporation is using employees of Daitch Shopwell to deliver dairy and bakery products from a Daitch Shopwell warehouse to Bohack stores with equipment owned by Fleet Services of New York, Inc., a wholly owned subsidiary of The Bohack Corporation."

The Joint Local Committee viewed the dispute as a jurisdictional dispute between the Union and locals whose members were employed by the wholesale grocers and were delivering merchandise to Bohack, and referred the matter to the Joint Council as an inter-local union dispute.

On May 12, 1975, the parties appeared before the Joint Local Committee.[2] The Joint Local Committee, noting that the parties appeared and testified, held that Bohack "is in violation of Article 32," and ordered Bohack to ". . . cease and desist, forthwith, from having its bargaining unit work subcontracted out which is violative of said Article."

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[1] Article 32 is a covenant by the employer not to contract or assign work . . . "of the kind, nature or type covered by, presently performed, or hereafter assigned to the collective bargaining unit . . . ."

[2] Bohack claims it appeared without counsel to challenge the jurisdiction of the Joint Local Committee. The Union claims that Bohack ". . . argued the merits of their dispute."

On May 27, 1975, the Union instituted a proceeding for confirmation of the arbitration award in New York State Supreme Court, Queens County. That proceeding was removed to this court on Bohack's petition.

The Union was advised that Bohack did not intend to abide by the terms of the arbitration. On June 30, 1975, the Union placed picket lines at Bohack's terminal and sixteen of its retail supermarkets. On the same day, Bohack made application for a temporary restraining order before Bankruptcy Judge Parente. After an evidentiary hearing, Judge Parente made the following findings:

> (1) That arbitration was not authorized as required by section 26 of the Bankruptcy Act (11 U.S.C. §49), and that the arbitration award was null and void and of no effect;
>
> (2) That if the strike continued, Bohack would suffer irreparable harm; and
>
> (3) That the Union had agreed not to strike under the circumstances.

On June 30, 1975, at the conclusion of the hearing Judge Parente signed a temporary restraining order restraining the Union from picketing.

On July 16, 1975, Judge Parente signed an order enjoining the Union from picketing or striking "during the pendency of this action."

On July 18, 1975, Judge Parente signed an order directing the Union to show cause why Bohack should not be permitted to reject the labor contract. The motion was returnable on July 25, 1975. The hearing was adjourned by stipulation to await the decision of the Court of Appeals in Shopmen's Local Union No. 455, International Association of Bridge Structural and Ornamental Iron Workers, AFL-CIO v. Kevin Steel Products, Inc. /3

Proceedings Pending in this Court

(1) The proceeding to confirm the arbitration award (removed fromNew York Supreme Court, Queens County);

(2) An action by the Union pursuant to Section 301(a) of N.L.R.A., 29 U.S.C. §185(a), to compel Bohack ". . . to specifically perform its collective bargaining agreement with plaintiff and to submit any grievances between them to the grievance procedure;" /4 and

/3 519 F.2d 698 (2d Cir. 1975). The Union moved to stay the hearing on the pedition to reject the labor contract. The motion was resolved by stipulation to continue the hearing if appropriate under Kevin Steel. The court directed the hearing to proceed in the Bankruptcy Court.

/4 The complaint claims violation of the covenant against subcontracting, the validity of the arbitration award, and the invalidity of the preliminary injunction order. Bohack's answer incorporates a counterclaim seeking arbitration upon authorization of the Bankruptcy Court pursuant to Rule 919(b) of the Bankruptcy Rules (formerly section 26 of the Bankruptcy Act, 11 U.S.C. §49).

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(3) An appeal from Judge Parente's order dated July 16, 1975, enjoining the Union from striking or picketing.

Lack of Authority to Arbitrate Labor Disputes

Bohack challenges the validity of the arbitration award on the ground that as debtor in possession, it lacked authority to proceed to arbitration without permission of the court. /5 Section 26(a) of the Bankruptcy Act, 11 U.S.C. §49(a). The Union, relying on Tobin v. Plein, 301 F.2d 378 (2d Cir. 1962) argues that such authorization is unnecessary where as here the labor contract executed prior to the filing of the petition, contained the grievance procedure and arbitration clause. /6

/5 Section 26(a) provides:

> The receiver or trustee may, pursuant to the direction of the court, submit to arbitration any controversy arising in the settlement of the estate.

Bankruptcy Rule 919(b) which supersedes section 26(a) provides:

> On stipulation of the parties to any controversy affecting the estate the court may authorize the matter to be submitted to final and binding arbitration.

/6 In Tobin v. Plein, supra, the trustee made application to arbitrate a dispute which occurred before the filing of the petition pursuant to an arbitration clause in the contract out of which the dispute arose. The trustee moved to vacate the order of authorization claiming the contract was rejected by his failure to affirm within 60 days as provided in section 70(b) of the Bankruptcy Act, 11 U.S.C. §110(b). The trustee argued that arbitration in any event must be conducted under the procedures set forth under General Order 33. The court said/page 381:

The court finds that reliance on Tobin v. Plein is misplaced for there authorization was sought by the trustee and granted, and the issue before the court was whether the arbitration machinery provided by contract or by the general order should be employed.

In re Muskegon Motor Specialties Company, 313 F.2d 841 (6th Cir. 1963), presented the court with the issue presented here./7 The court found that the rights of the employees

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/6 Cont.

> These provisions specify the procedure to be followed for the arbitration of controversies arising in the settlement of the estate. But this section is clearly drawn to provide arbitration machinery where no contractual arrangements exist. It does not supersede explicit contractual provisions.

/7 In Muskegon, a division of the debtor went out of business and terminated the employees of the division. The union brought an action in the district court to compel arbitration. Subsequent to filing the suit, Muskegon filed a petition under Chapter XI of the Bankruptcy Act (converted to a Chapter X proceeding). The union argued, as does the Union here, that federal policy favored arbitration of labor disputes, United Steel Workers of America v. American Manufacturing Co., 363 U.S. 564, 80 S.Ct. 1343 (1960), United Steel Workers of America v. Enterprize Wheel and Car Corp., 363 U.S. 593, 80 S.Ct. 1358 (1960), United Steel Workers of America v. Warrior & Gulf Navigation Co., 363 U.S. 574, 80 S.Ct. 1347 (1960).

were fixed and a question of law remained which could better be passed on by the court (at page 843). The court said:

> The reorganization court had "exclusive jurisdiction of the debtor and its property wherever located." 11 U.S.C. §511 . . . [T]he court had all the powers of a bankruptcy court . . . and of a court of equity. 11 U.S.C. §§514, 516 . . . The bankruptcy court does not ordinarily surrender its jurisdiction except under exceptional circumstances. Mangus v. Miller, 317 U.S. 178, 186, 63 S.Ct. 182, 87 L.Ed. 169. Whether the bankruptcy court should surrender its jurisdiction to another tribunal involved the exercise of judicial discretion. Thompson v. Magnolia Petroleum Co., 309 U.S. 478, 483, 60 S.Ct. 628, 84 L.Ed. 876. 313 F.2d at 842.

In Johnson v. England, /8 356 F.2d 44 (9th Cir. 1966), the court in denying arbitration under a labor agreement held:

> A decision of an arbitrator here would involve interests of parties who never consented to arbitration, namely, the trustee in bankruptcy and the general creditors. They ought not to be bound by the decision of an arbitrator selected by the employer and union. The issues here are within the special competence of a bankruptcy court. 356 F.2d at 51.

/8 In Johnson v. England, supra, the union commenced a proceeding in the state court to compel arbitration of a labor dispute. Subsequently, the employer filed a voluntary petition in bankruptcy. The arbitration proceeding was removed to the district court. The court pointed out that the employer had ceased to do business.

/9

The teaching in Kevin Steel is instructive. The court found no irreconcilable conflict between the policy of the Bankruptcy Act in preserving the funds of the debtor and to give the debtor a new start on the one hand, and that of the National Labor Relations Act encouraging the creation and enforcement of collective bargaining agreements (519 F.2d at p. 706). This court finds no irreconcilable conflict between the Bankruptcy Act and the strong federal policy favoring the arbitration of labor disputes.

The Bankruptcy Judge should first pass on the advisability of retaining jurisdiction of a dispute affecting the proceeding before him. Rule 919(b) requires authorization of the Bankruptcy Court regarding the resolution of claims affecting the estate. Upon filing of the petition Bohack became a new entity "with its own rights and duties subject to the supervision of the bankruptcy court . . .. Until the debtor . . . assumes the old agreement or makes a new one it is not a "party" under section 8(d) to any labor agreement with the union . . ." Kevin Steel, 519 F.2d at 704.

/9 The same result was reached by another panel of the Second Circuit Court of Appeals in Brotherhood of Railway, Airline and Steamship Clerks et al.v. REA Express et al., Nos. 75-5007 and 75-5008 (2d Cir. Aug. 27, 1975).

The motion to confirm the award of the Joint Local Committee /10 is denied.

JURISDICTION OF THE BANKRUPTCY COURT OVER LABOR DISPUTES

The National Labor Relations Act was a comprehensive plan of the Congress designed to promote industrial peace through voluntary collective bargaining agreements, Vaca v. Sipes, 386 U.S. 171, 87 S.Ct. 903 (1967). The Congress granted the National Labor Relations Board (Board) primary and exclusive jurisdiction over claims of unfair labor practices. International Brotherhood of Boilermakers, etc. v. Hardeman, 401 U.S. 233, 91 S.Ct. 609 (1971), Carpenters District Council etc. v. United Contractors Ass'n of Ohio, 484 F.2d 119 (6 Cir. 1973). The Union's claim was both an allegation of a breach of the labor agreement (Article 32) subject to determination under the appropriate grievance and arbitration procedure and of an unfair labor practice (29 U.S.C. §158(e)) of which the Board has primary and exclusive jurisdiction. The Supreme Court said in N.L.R.B. v. Strong, 393 U.S. 357, 89 S.Ct. 541(1969):

/10 It is apparent that the grievance as presented to the Joint Local Committee was a matter outside its jurisdiction and the proceedings upon which it was based, a nullity.

> . . . [T]he business of the Board, among other things, is to adjudicate and remedy unfair labor practices. Its authority to do so is not "affected by any other means of adjustment or prevention that has been or may be established by agreement, law, or otherwise . . . ." §10(a), 61 Stat. 146, 29 U.S.C. §160(a). Hence, it has been made clear that in some circumstances the authority of the Board and the law of contract are overlapping, concurrent regimes, neither pre-empting the other (citations omitted). Arbitrators and the courts are still the principal sources of contract interpretation (footnote omitted), but the Board may proscribe conduct which is an unfair labor practice even though it is also a breach of contract remediable as such by arbitration and in the courts (citation omitted). It may also, if necessary to adjudicate an unfair labor practice, interpret and give effect to the terms of a collective bargaining agreement (citation omitted). 393 U.S. at 360-61, 89 S.Ct. 541, 544-45.

The role of the court is to preserve the status quo in a matter before the Board if the officer or regional attorney "has reasonable cause to believe the charge is true and that a complaint should issue . . .," Section 10(l) of the Act, 29 U.S.C. §160(l), or compel arbitration if the issue is arbitrable under the agreement or otherwise require specific performance of the agreement. Section 301(a) of the Act, 11 U.S.C. §185(a). Jurisdiction to grant injunctive relief is solely in the district court.

The Bankruptcy Court does not have jurisdiction over labor disputes. The preliminary injunction order of July 16, 1975, is reversed.

SUMMARY

It is ORDERED

(1) The preliminary injunction order is vacated. /11

(2) The petition (in the form of an affidavit) to confirm the arbitrator's award is dismissed (Docket No. 75-C-905). The Clerk is directed to enter judgment in favor of Bohack and against the Union dismissing the petition.

(3) The issue of the advisability of granting the debtor leave to arbitrate is reranded to the Bankruptcy Court for proceedings consistent with this opinion.

U. S. D. J.

/11 This court will hear Bohack's motion for a preliminary injunction made under docket No. 75-C-1191 on November 26, 1975 at 10:00 a.m. The court has this day signed a temporary restraining order pending determination of that motion.

UNITED STATES DISTRICT COURT

EASTERN DISTRICT OF NEW YORK

TRUCK DRIVERS LOCAL UNION NO. 807, INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN AND HELPERS OF AMERICA, Plaintiff, -against- THE BOHACK CORPORATION, Defendant.	Civil Action No. 75C 1191 ORDER TO SHOW CAUSE WITH TEMPORARY RESTRAINING ORDER

Upon reading and filing the annexed affidavit of Joseph Binder sworn to on June 30, 1975, the transcript of the sworn testimony of witnesses at a hearing on June 30, 1975 before Hon. C. Albert Parente, Bankruptcy Judge in Bankruptcy No. 74 B 933, and the pleadings, affidavits and all papers heretofore filed herein, let plaintiff show cause before this Court on the 26th day of November, 1975, at in Courtroom #5 10:00 o'clock in the forenoon of that day, at the United States District Court, 225 Cadman Plaza East, Brooklyn, New York

WHY an order should not be made in this proceeding restraining and enjoining the plaintiff from conducting a strike, walkout, or work stoppage, or establishing a picket line at defendant's various places of business or at the premises of any other party or person doing business with defendant during the pendency of this action.

Sufficient cause having been shown therefor, and

it appearing that plaintiff is about to commit the acts complained of, to the irreparable injury of defendant, pending the hearing and determination of this motion, plaintiff is hereby restrained and enjoined from conducting a strike, walkout, or work stoppage or establishing a picket line at defendant's various places of business or at the premises of any other party or person doing business with defendant.

Let personal service of a copy of this order and the papers on which it is based on the plaintiff or its attorneys on or before the 21st day of ~~August~~ September, 1975 be deemed good and sufficient service.

Dated: Brooklyn, New York
~~August~~ September 18, 1975
5:50 P.M.

UNITED STATES DISTRICT JUDGE

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK
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In the Matter of

THE BOHACK CORPORATION,

Debtor.

Bankruptcy No. 74B933

----------x

THE BOHACK CORPORATION,

Plaintiff,

-against-

TRUCK DRIVERS UNION LOCAL 807,
INTERNATIONAL BROTHERHOOD OF TEAMSTERS,
et al,

Defendants.

AFRIDAVIT

----------x

STATE OF NEW YORK)
)SS:.
COUNTY OF KINGS)

JOSEPH BINDER, being duly sworn, deposes and says:

I am the Executive Vice-President of THE BOHACK CORPORATION, the plaintiff and Debtor in Possession herein. I submit this affidavit in support of plaintiff's application for a temporary restraining order and preliminary injunction of the strike which commenced this morning at 6:00 A.M.

The conduct which we seek to enjoin is a strike, either authorized or "wildcat", by members of TRUCK DRIVERS LOCAL 807, INTERNATIONAL BROTHERHOOD OF TEAMSTERS, who are employed by

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BOHACK as drivers of trucks that pick up merchandise from whole-sale grocers and transport it to the various BOHACK stores.

The background of the proposed action and our application to enjoin it is fairly simple. One of the costliest items is the debtor's operations prior to the filing of the original petition under Chapter XI was the operation of the warehouses at Bohack Square. As part of the proposed Plan of Arrangement and since approximately November 1974, BOHACK has discontinued that operation and purchased its groceries directly from wholesale grocers. Of the approximately 90 stores BOHACK is operating, abo - 60 located largely in Nassau and Suffolk Counties were serviced by Bozzuto's Inc., located in Cheshire, Connecticut; and about 27 stores located largely in Brooklyn and Queens were serviced by Filigree Foods, Inc., of Totowa, New Jersey. The members of Local 807 did all of the driving in the operation, taking Bohack trucks to the various suppliers, and then delivering the merchandise to the individual Bohack stores.

On or about May 1, 1975, Filigree filed its own Chapter XI proceeding in The United States District Court for New Jersey and a Receiver was appointed. Filigree stopped supplying merchandise to BOHACK and they will not supply us in the future. Inasmuch as almost one-third of the operating BOHACK stores are involved, I contacted Bozzuto's Inc. to determine whether they

expand their operation to cover all our stores. I was told that the same considerations of logistics that limited the initial course of business still applied and that they could not accommodate us, although they wished to help, and thus agreed to supply seven stores on a temporary basis.

I immediately sought other sources of grocery supply, and the only one that was economically feasible turned out to be KRASDALE FOODS, INC., which started supplying us on May 5, 1975. KRASDALE, however, has its own drivers, who belong to LOCAL 138, INTERNATIONAL BROTHERHOOD OF TEAMSTERS, and deliveries to BOHACK stores will be made by those drivers under the terms of the arrangement between BOHACK and KRASDALE, the only arrangement available to BOHACK.

BOHACK's drivers, naturally unhappy about the proposal, and various union officials have indicated that a strike may occur at any moment, as the drivers feel that they are being forced into vacations and otherwise injured. On May 15, 1975, plaintiff was served with a 24 hour notice, under Section 2 of the Rider Agreement to the 1973-1976 Area Wide Master Freight Agreement (Exhibits "A" and "B"). On May 16, 1975, the JOINT LOCAL COMMITTEE FOR NEW YORK CITY, upheld the Union's position and thereafter the Union sought, by motion returnable in the Supreme Court of the State of New York, to confirm such award.

The application was removed to the United States District Court for the Eastern District of New York pursuant to the applicable federal rules of civil procedures and the award has not as yet been confirmed. BOHACK has consistently taken the position that the Local Committee was without jurisdiction to render such award and that the issue rather must be resolved by the National Grievance Committee inasmuch as an interpretation of the National Agreement is involved.

Notwithstanding the fact that this award has not yet been confirmed, the Union has bypassed its own contractual procedure in the desire to push BOHACK to the wall on this matter.

It is respectfully submitted that any strike by the drivers would effectively shut down the Debtor and destroy any chance of turning it into a profitable operation and implementing the proposed Plan of Arrangement now under consideration by BOHACK's creditors. The irreparable nature of such injury, as well as its immediate damage is so obvious that it need not be belabored by me in this application.

In this regard, it should be noted that defendants will not be harmed if the injunction is issued. There is specific machinery for the resolution of just such a jurisdictional dispute within the INTERNATIONAL BROTHERHOOD OF TEAMSTERS and Article 30 of the Area Wide Master Freight Agreement sets out the method for settling such a dispute. It further provides:

"Pending such termination, the Employer shall not be precluded from seeking appropriate legal or administrative relief against work stoppages or picketing in furtherance of such dispute."

Moreover, I am advised by counsel that where a jurisdictional dispute between two labor unions is involved, and the Debtor is an innocent bystander, as is the situation here, the Bankruptcy Court has the power to enjoin a strike or the establishment of a picket line. (See, IN THE MATTER OF CLEVELAND AND SANDUSKY BREWING CO., 11 F. Supp. 198, 29 Am. B.R. (N.S.) 393 (N.D. Ohio 1935). It is clear that this combination of merit and irreparable injury requires the granting of this application.

The immediate damage to BOHACK is immense. As of 9:00 o'clock this morning, June 30, 1975, there were 40 undelivered truckloads of meat, groceries and other items in the Bohack Terminal but there were pickets not only at the Bohack Terminal but at the following stores:

143-66 243rd Street, Rosedale
802 Manhattan Avenue, Brooklyn
249-26 Northern Boulevard, Littleneck
66-26 Metropolitan Avenue, Middle Village
Pillside and Francis Lewis Boulevard, Hollis
7420 Third Avenue, Brooklyn
82-15 151st Street, Howard Beach
2475 Jericho Turnpike, Garden City Park
Rocky Point
571 Grandview Avenue, Ridgewood
149-28 14th Avenue, Whitestone
176-64 Union Turnpike, Flushing
158 Gates Avenue, Ridgewood
97-15 Metropolitan Avenue, Forest Hills
8420 Broadway, Elmhurst
79-15 Elliot Avenue, Elmhurst

Moreover, Bozutto's drivers have been told about the pickets and have been instructed not to cross the picket lines at any stores. In fact, the Union is attempting to close out the entire BOHACK chain.

Each day's loss of business represents $500,000.00 in loss of cash flow to BOHACK.

If the strike is allowed to continue, the Debtor will cease to exist as an operating entity.

WHEREFORE, it is respectfully requested that a preliminary injunction issue pending the outcome of this litigation, and that pending the hearing of the motion the Court temporarily restrain the defendants from committing the acts complained of.

Joseph Binder

Sworn to before me this 30th
day of June, 1975.

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

In the Matter of

ORDER TO SHOW CAUSE WITH TEMPORARY RESTRAINING ORDER,

THE BOHACK CORPORATION,

Plaintiff,

-against-

TRUCK DRIVERS UNION LOCAL 807, INTERNATIONAL BROTHERHOOD OF TEAMSTERS, et al,

Defendants.

U.S. District Court
Jamaica, New York

June 30, 1975
2:30 P.M.

HEARING

BEFORE: HON. C. ALBERT PARENTE,
Bankruptcy Judge

* * *

APPEARANCES:

J. STANLEY SHAW, ESQ.
Attorney for Plaintiff
770 Lexington Avenue
New York, New York 10021
BY: JESSE I. LEVINE, ESQ.,
Of Counsel.

KELLEY, DRYE & WARREN, ESQS.
Attorneys for Plaintiff
350 Park Avenue
New York, New York 10022
BY: MARC L. SILVERMAN, ESQ.,
Of Counsel.

J. WARREN MANGAN, ESQ.
Attorney for Defendant
32-43 49th Street
Long Island City, New York 11103

* * *

THE COURT: Let the record show that this is a preliminary hearing to ascertain whether the Court should sign a temporary restraining order in the matter of the Bohack Corporation, Debtor and Plaintiff, against Truck Drivers Union Local 807, International Brotherhood of Teamsters, Defendants.

I will hear from the attorney for the Debtor, Plaintiff.

MR. LEVINE: Your Honor, with respect to the two issues involved herein, the question of the Court's jurisdiction, the question of

award which said to cease and desist on the activity that you've been engaged in since December of 1974.

THE COURT: This Court has the authority to set aside--

MR. MANGAN: (Interp'g.) There is no precedent at all for it, Your Honor.

THE COURT: I am establishing a precedent by undertaking an appeal to a higher authority.

MR. MANGAN: It is clear, regardless of the position you take with regard to the arbitration award, that this Court does not have jurisdiction to render an injunction. It is without jurisdiction by way of Section 104 of the Norris-LaGuardia Act.

J O S E P H B I N D E R , called as a witness herein, after first having been duly sworn by The Honorable C. Albert Parente, testified as follows:

EXAMINATION BY MR. LEVINE:

Q Are you employed by the Bohack Corporatio

A Yes, I am the Executive Vice President of the Bohack Corporation.

Q Are you involved in a labor matter?

A I am.

Q As a matter of fact, in December of 1974, when Bohack entered into an agreement with Filigree Foods to undertake the supply of wholesale groceries to Bohack--

A (Interp'g.) Sometime prior to December, 1974 we entered into a contract.

Q Did there come a time during that approximate period when you were approached or notified by any officer of the Defendant union as to objection to the process with respect to either Filagree, Shopwell or any other group?

A In December, 1974, we, Bohack, closed its produce and dairy warehouses and contracted to purchase such goods from Shopwell, Inc. The arrangement with Shopwell was that they deliver the produce from the warehouses directly to the Bohack stores.

Shopwell did, and presently still has Local 277 of the International Teamsters Union.

At that point, Bohack was summoned to the New York City Committee Trucking Association and, after a discussion at this meeting, it was decided by the panel to refer this as a jurisdictional dispute to the Joint Council. It was alleged that Local 27

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wanted the work that was being done by Local 277, which was the Shopwell union, and, at that point, this was referred to Joint Counsel 16, Queens, as a jurisdictional problem between the two I.B.T. locals.

Q Were you advised by Joint Counsel 16?

A No, I was not.

Q When was the first time you knew that the dispute was being reopened?

A About April 30.

Q That was '75?

A '75, I'm sure.

In the interim, groceries were being purchased F.O.B. by these warehouses and being picked up by 807 drivers. On April 30, Filigree went into Chapter 11. There is a limited amount of wholesale grocers in New York, but Bohack had no choice but to go to Krasdale which also has a contract with 147, and Krasdale's management would only take on the supplying of Bohack stores--approximately 30 stores, on an F.O.B. store delivery basis.

Q When you say you went to Krasdale, did you approach any other wholesaler?

A We approached Nash, White Cross

1/2 Q

Foods, and we approached Associated Foods, who also filed Chapter 11.

Q Was your approach to all those wholesalers, to let Local 807--your approach to the wholesalers--was it to let Local 807 pick up at the warehouses to deliver to the stores with no objection of the union and the same with the associated union?

A Yes.

Q Are there any other suppliers in the metropolitan area that you could have gone to other than Krasdale, Met, and Associated?

A The only other one is Bizzuto, in Cheshire, Connecticut, which is a geographical problem for Bohack as far as the dollars involved.

Q There are no other wholesale grocers in New York?

A Referable to Bohack, no.

Q Did Met Foods and White Cross agree to supply Bohack?

A They did, we have a credit problem with them. When Associated went to Chapter 11, they told us they have no more supplies.

Q Was Associated able to fulfill your needs?

A No, they did not.

Q Did there come a time shortly after April 30th, 1975, when you received notice that the union sought to reopen the matter?

A Yes, we got a notice of the meeting. And, I went down with our Chairman of the Board, Mr. Noble.

Q Did you object to the jurisdiction of the Local Committee at that time?

A At the outset of the meeting, the Chairman of the panel thought that we were in the wrong jurisdiction, as we did, and we objected.

The panel went ahead with the discussion when we left, and then we were informed of the award a day or two later.

Q Approximately what volume of business does Schack do at the present time on a daily basis?

A Well, the average volume is about 4.2, to 4.3 million dollars per week. The volume fluctuates by the day; e.g., a Monday would be about $5,500 and in days toward the latter part of the week, the volume increases.

Q So, that if the strike went on until the end of the week, it would be more?

A If the strike goes on past today Bohack's loss would be beyond reproach.

Q Can you tell me what deliveries have been made today of merchandise to Bohack stores, if any?

A Well, the basic merchandise comes out of Bohack Square. Our meat and delicatessen is delivered by 807 drivers.

I have forty trailers of merchandise that is not moving and since the strike has started there have been various confrontations in at least two stores, one on Fresh Pond Road, where the police had to be called by Local 807 pickets for interfering with the drivers of the other stores of Bohack, in trying to force them into not crossing the picket lines and not drive for the Bohack stores.

Q Are they being held back?

A Bohack is essentially out-of-business today because of the fact of forty trailer loads of merchandise sitting in Bohack Square.

THE COURT: Is any of this merchandise perishable?

THE WITNESS: The meat can sit for a limited period of time before deterioration...

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in.

The other items, Your Honor, are all fresh items.

MR. MANGAN: It is my understanding that all of this is in Bohack stores and all of the warehouse employees who load these trailers are available to unload them, if the case came to getting the trailers loaded back into the refrigeration.

It is my understanding that effective July 7, which is next Monday, the meat is no longer going to be delivered out of Bohack Square by the employees of Bohack but is going to go the way of the other work, to non-employees of Bohack, in direct contravention and in opposition of what that award of May 16 says.

This is not a matter of all parties standing pat. In fact, Monday, July 7, or thereabouts, there is going to be activity taken by the company as in opposition and direct violation of the arbitration award, and it is going to be at the expense of another ten to fifteen employees of Bohack, working under the new contract.

are lifted if the employer fails to comply with the arbitration award within ten days after it is rendered.

I refer to Article 46, Section 1 and I refer you to those prohibitions that there shall be no strike, lock-out, tie-up, work stoppage, or legal proceedings, and within ten days, if there has been no compliance, then either party can resort to those activities and they include, yes, Your Honor, they include strike.

THE COURT: Let's have the record clear.

It is the contention of counsel that they merely went there to test the jurisdiction. They appeared specifically and objected to jurisdiction?

MR. MANCAN: Counsel was not there, Your Honor. I was there. I saw what transpired. The Chairman of the panel was the only one who raised the point. The employer never even raised the point and it was after that being raised, then, the employer went right ahead, submitted to the arbitrament of

Minder

He said to you that the meat that was in the warehouse was being delivered by local 807 drivers who are employees of Bohack. They are no longer performing that work. There is going to be no Bohack.

The parties are not going to be in a position of status quo. In fact, the company intends, as of Monday, to discontinue the contract of its employees for delivery of meat and to direct that work elsewhere.

The failure of the employer to comply with an arbitration award, but continues the practice, and on Monday there will be a further continuation and what the Court will be doing is put these people in a position where they are unable to take the economic recourse, having complied in every way to the contract.

THE COURT: I ask you again, Counselor, in your expertise in the labor field, does economic recourse contemplate a strike?

MR. MANCAN: I said to you, Your Honor, I am reading from the contract and the prohibitions that are in the agreement, that neither party can take certain action, those prohibi-

procedure and argued out its position and there was no determination that was made.

I don't think there is any question in anyone's mind that you don't have to walk out of a meeting once you have conceded jurisdiction. You are there, if you submit to the jurisdiction, and you argue on behalf of your client. You never moved to stay the arbitration.

They never moved to arbitrate the award. They wanted to get the arbitration proceeding then. They argued the proceeding and we decided to get a confirmation of the award, then the employer comes forward and says we don't have any right under the no-strike provision.

We can't have it both ways. Either there is this Section 1-A or then we are entitled to continue with this economic activity and this Court is without jurisdiction to enjoin it.

MR. LEVINE: In the interpretation of the Norris-LaGuardia Act, we objected to jurisdiction. We went to the meeting and objected to the jurisdiction immediately thereafter. That very issue is being tested.

THE COURT: Do you have any documentary evidence in support of the facts?

MR. LEVINE: We have the testimony of Mr. Binder.

THE WITNESS: The first time, in December or January, I was specifically told, "Don't bring any employees," and that the only ones allowed in the room were the principals.

The first time, I went myself; the second time that I went, in May, I knew that I had this problem so I went with our Chairman of the Board knowing I wasn't allowed to bring an employee.

MR. MANGAN: When was this?

THE WITNESS: On the day of this proceed and I notified you that I would be there.

The point I'm trying to make is that I thought you were there as a representative of the union, not as an attorney.

When I left there, then I was told. I didn't believe you were going to be there as an attorney.

MR. MANGAN: Am I anything but the attor for Local 807?

THE WITNESS: I don't know.

THE COURT: We are moving ahead beyond the aspect of what we have before us.

The Court's opinion, after having carefully weighed the arguments on both sides, that since the contract contained an arbitration provision which was entered into prior to bankruptcy, and in behalf of the union was not judicially sanctioned, the issue was submitted to arbitration without the consent of the trustee or upon the necessary authorization of the Bankruptcy Court. Consequently, the Court finds that the award rendered by the New York City Joint Local Committee was bereft of validity and being in contravention to Section 26 of the Bankruptcy Act as superceded by Rule 919, Subdivision B.

Accordingly, the Court finds no bars to the signing of a temporary restraining order in view of the no-strike provision contained in the collective bargaining agreement between the parties.

I grant the parties an immediate right of appeal without the formal notice, if the District Court will entertain such a notice.

In other words, permission is orally given under Rule 801, Notice of Appeal.

This matter, in view of its gravity, may be brought before a District Court for immediate review and I would ask the union corporation, until the District Court either affirms or reverses my decision, to comply with the order of this Court restraining a further action by the union.

MR. MANGAN: Your Honor, I think you should sign an Order setting down a date for a hearing on the preliminary injunction.

THE COURT: I assume there will be immediate review so that we can set it down on any date.

The only issue before me is the temporary restricting order which I have just signed.

(Whereupon, the hearing was concluded.)

* * *

CERTIFICATE

STATE OF NEW YORK }
COUNTY OF QUEENS } SS.:

I, JOSEPHINE LONGO, a shorthand reporter and Notary Public within and for the State of New York, do hereby certify:

That the minutes hereinbefore set forth are a true and accurate record of Hearing.

I further certify that I am not related to any of the parties to this action by blood or marriage; and that I am in no way interested in the outcome of this matter.

IN WITNESS WHEREOF, I have hereunto set my hand this 9th day of July, 1975.

JOSEPHINE LONGO

EXHIBIT "S"

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

TRUCK DRIVERS LOCAL UNION NO. 807, INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN AND HELPERS OF AMERICA, Plaintiff, -against- THE BOHACK CORPORATION, Defendant.	CIVIL ACTION NO. 75C 1191 ORDER TO SHOW CAUSE TO DISSOLVE TEMPORARY RESTRAINING ORDER

The above-entitled action having come before this Court, the undersigned Judge presiding, upon motion of the plaintiff for an order to show cause why the defendant's Temporary Restraining Order entered herein on the 19 day of November, 1975 should not be dissolved for want of jurisdiction, in that it was entered in violation of the provisions of the Norris-LaGuardia Act, 29 U.S.C. §101 et seq. and arbitration was not ordered therein.

Now Therefore It is Hereby Ordered, as follows:

1. That the defendant above named is directed and required to appear before the above-entitled Court, and ~~the undersigned~~ Judge presiding, on the 24 day of November, 1975 at 10 o'clock in the forenoon of that day in Courtroom # 5, at the United States District Court, 225 Cadman Plaza East, Brooklyn, New York to show cause why said Temporary Restraining Order should not be dissolved.

2. Let personal service of a copy of this order and the papers on which it is based on the defendant or its attorneys on or before the 25 day of November, 1975 at 4:45 o'clock be deemed good and sufficient service.

Dated: Brooklyn, New York
November 25, 1975

Mark A. Costantino
United States District Judge

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

TRUCK DRIVERS LOCAL UNION NO. 807, INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN AND HELPERS OF AMERICA, Plaintiff, -against- THE BOHACK CORPORATION, Defendant.	CIVIL ACTION NO. 75C 1191 AFFIDAVIT IN SUPPORT OF MOTION TO DISSOLVE TEMPORARY RESTRAINING ORDER

STATE OF NEW YORK)
COUNTY OF QUEENS) ss.:

J. Warren Mangan, being duly sworn, deposes and says:

1. That he is attorney of record for the plaintiff herein.

2. That the annexed Order to Show Cause with Temporary Restraining Order was served upon the plaintiff and the Temporary Restraining Order must be dissolved by this Court.

3. That the plaintiff and defendant have been engaged in a labor dispute, as defined in 29 U.S.C. 104. This dispute arose between the plaintiff and defendant on December 16, 1974 and has continuously existed thereafter. The dispute involves truck deliveries of defendant's produce, dairy products, groceries, meat and bakery items to defendant's stores.

4. The plaintiff has represented the truck drivers employed by defendant for over thirty (30) years. On December 16, 1974 the defendant laid off approximately sixty (60) truck drivers and commenced receiving deliveries of its produce, dairy products and bakery items via trucks operated by persons other than its

own employees. Plaintiff initiated the grievance procedure set forth in its labor agreement with the defendant. A notice of arbitration was served on the defendant and on May 12, 1975 plaintiff and defendant appeared before the arbitration panel. Plaintiff and defendant argued the merits of their dispute and based upon the evidence and testimony presented defendant was advised on May 16, 1975 to "cease and desist forthwith from having its bargaining unit work subcontracted out" in violation of Article 32 of the labor agreement.

5. On June 30, 1975 the defendant had not complied with the May 16, 1975 arbitration award and the number of drivers regularly employed had been further reduced. Prior to December 16, 1974 there had been approximately 150 truck drivers employed by the defendant. On June 30, 1975 that number had been reduced down to thirty-two (32). On June 30, 1975 the plaintiff commenced peaceful picketing of defendant's terminal and certain of its stores for its failure to comply with the May 16, 1975 arbitration award. That concerted activity was sanctioned by Article 46, Section 1(a) of their collective bargaining agreement.

6. On June 30, 1975 defendant sought and obtained a temporary restraining order from Bankruptcy Judge C. Albert Parente. On July 16, 1975 Bankruptcy Judge Parente executed a preliminary injunction order against"conducting a strike, walkout, or work stoppage or establishing a picket line at [defendant's] various places of business or at the premises of any other party or person doing business with [defendant] during the pendency of this action." On July 18, 1975 Joseph Binder, the Executive Vice President of the defendant terminated all of its truck drivers and defendant

has thereafter received all deliveries to its stores via trucks operated by persons other than its own employees. The net effect of defendant's actions since December 16, 1974 has been to reduce its truck drivers collective bargaining unit from approximately 150 to 0.

7. Plaintiff filed an appeal of Bankruptcy Judge Parente's preliminary injunction order on July 18, 1975 and moved in this Court on July 21, 1975 for an order staying the application of that order pending the appeal or in the alternative vacating Bankruptcy Judge Parente's order. Plaintiff had also moved for an order confirming the May 16, 1975 arbitration award and instituted an action in this Court under 29 U.S.C. 185(a) to compel arbitration of those disputes that arose as a result of defendant's July 18, 1975 conduct. Defendant answered that complaint and instituted a counterclaim for a permanent injunction. Defendant also furnished this Court, on August 1, 1975, with the annexed papers requesting a Temporary Restraining Order against the plaintiff.

8. On November 19, 1975, Chief Judge Mishler (1) vacated Judge Parente's preliminary injunction of July 16, 1975, (2) dismissed plaintiff's petition to confirm the May 16, 1975 arbitration award and directed the Clerk to enter judgment in favor of defendant and against the plaintiff, (3) remanded to Bankruptcy Judge Parente plaintiff's action to compel arbitration and (4) signed defendant's annexed Temporary Restraining Order.

9. Before an employer in a dispute with a union can obtain an injunction in a labor dispute such relief must (1) be limited to vindicating the arbitration process and (2) satisfy a

number of conditions. Section 7 of the Norris-LaGuardia Act lists a good many of them, including the requirements that a Temporary Restraining Order "shall be effective for no longer than five days" and that such an order should not be issued except upon "testimony under oath, sufficient, if sustained, to justify the court in issuing a temporary injunction upon a hearing after notice," and upon the condition that:

> "[C]omplainant shall first file an undertaking with adequate security ... to be fixed by the court sufficient to recompense those enjoined for any loss, expense, or damage caused by the improvident or erroneous issuance of such... injunction, including all reasonable costs (together with a reasonable attorney's fee) and expense of defense against the order or against the granting of any injunctive relief sought in the same proceeding and subsequently denied by the court."

10. Section 8 of the Norris-LaGuardia Act requires a showing in the complaint that the moving party has made "every reasonable effort to settle" the dispute. Section 9 limites the restraints of a temporary restraining order to those "specific acts...expressly complained of in the...complaint". The Norris-LaGuardia Act still applies to all labor disputes in which a federal court can issue an injunction and that nothing in Boys Markets, Inc. v. Retail Clerks Union, Local 770, 398 U.S. 235 (1970) is to the contrary. Similarly in Boys Markets, the Supreme Court emphasized the conditions precedent to obtaining an injunction in labor disputes. Thus, since the November 19, 1975 Temporary Restraining Order did not require arbitration of the

labor dispute between plaintiff and defendant, as Boys Markets teaches, and was deficient in numerous other respects, i.e., not in compliance with Sections 7, 8 and 9 of the Norris-LaGuardia Act, it was improperly entered and must be dissolved.

J. WARREN MANGAN

Sworn to before me this
25 day of November, 1975.

JOHN J. MANSFIELD
NOTARY PUBLIC, State of New York
No. 24-7703110
Qualified in Kings County
Certificate filed in Queens County
Commission Expires March 30, 1976

EXHIBIT "T"

UNITED STATES DISTRICT COURT

EASTERN DISTRICT OF NEW YORK

----------x

TRUCK DRIVERS LOCAL UNION 807, :

-against- :

BOHACK CORPORATION, :

Defendant. :

----------x

75-C-1191

United States Courthouse
Brooklyn, New York

November 26, 1975
10:00 o'clock A.M.

B e f o r e :

HONORABLE JACOB MISHLER, Chief U.S.D.J.

MICHAEL PICOZZI
OFFICIAL COURT REPORTER

Appearances:

J. WARREN MANGIN, ESQ.
Attorney for Plaintiff

KELLEY, DRYE & WARREN, ESQS.
350 Park Avenue
New York, New York
Attorneys for Defendant

BY: ROGER J. KARLEBACH, ESQ.

HARVEY L. GOLDSTEIN
401 Broadway
New York, New York
Creditors Committee

J. STANLEY SHAW, ESQ.
770 Lexington Avenue
New York, New York

THE CLERK: Civil motion, Truck Drivers Local Union 807, against Bohack Corporation.

MR. SHAW: Bohack is ready.

MR. MANGIN: Ready.

THE COURT: All right.

MR. MANGIN: Yesterday an Order to Show Cause was signed by Judge Costantino and served upon the firm of Kelley, Drye & Warren on behalf of the Bohack Corporation.

It is an Order to Show Cause to dissolve the temporary restraining order.

I received a copy of the temporary restraining order signed by yourself on November 18, and filed on November 19. And that temporary restraining order did not comply with the Norris-Laguardia Act, Section 7, 3, 9, of the statute, and did not fall within the narrow exceptions of the Boyce Market decision.

I now, on behalf of Local 807, move to dissolve that temporary restraining order on the basis of that statute and the decision of Boyce Market as well as the decisions of the Second Circuit in Emery Freight against Local 295.

THE COURT: When did you last read Emery Freight?

MR. MANGIN: Last night.

THE COURT: I had something to do with that,

you know.

MR. MANGIN: Yes, that is right. The recent decision of the Second Circuit in -- I'm sorry, I left my notes -- it's Buffalo and I can't think of the citation, I have the citation back at my table, but the Second Circuit has very carefully read Boyce Market and interpreted that decision as a narrow exception to Norris-Laguardia and requires as a part of any restraining order for any injunction that there be a direction that the employer go to arbitration; that Norris-Laguardia was only accepted on the principle that the employer could come in to compel the enforcement of the contract with respect to the arbitration provisions and that the union would be in a like position to compel the employer to go to arbitration.

THE COURT: Judge Feinberg wrote the Emery decision --

MR. MANGIN: Yes.

THE COURT: You will have to do more hemogenizing with the Bankruptcy Act --

MR. MANGIN: That may be true. The Second Circuit may have to do more hemogenizing. The Tenth Circuit has done some hemogenizing with reference to Carey against Westinghouse, and the Tenth Circuit decision is this narrow separation is not to be

expanded.

THE COURT: The employer has said they are willing to go to arbitration. That's all subject to permission by Judge Perenti, is that correct?

MR. MANGIN: That is the employer's position.

THE COURT: They are ready.

MR. MANGIN: No. The union is in a position where the union is seeking to compel enforcement of the contract, to go to arbitration to get a resolution. The employer cannot come in and say we are ready to go to arbitration but we have to go through the proceeding before the bankruptcy referee. They've got to come in and take a position: We want to go to arbitration now.

THE COURT: Can they go to arbitration today?

MR. MANGIN: If they can't then Norris-Laguardia applies and Boyce Market does not apply because the principal point in Boyce Market is both parties have to be contractually bound to go to arbitration and they have to go forward with that arbitration unless these two principles, two points are satisfied, then the narrow exception to Norris-Laguardia has not been satisfied and the employer is not entitled to a 301 injunction.

THE COURT: We will leave that aside. Are you

ready to proceed with the motion for a preliminary injunction?

MR. MANGIN: I am ready to proceed on the motion to vacate.

THE COURT: I run the Court, Mr. Mangin, you know that.

MR. MANGIN: I understand.

THE COURT: I am laying that aside.

Are you ready to proceed on the motion for a preliminary injunction?

MR. MANGIN: Yes, your Honor.

THE COURT: All right.

Who represents Bohack?

MR. SHAW: I do, your Honor. J. Stanley Shaw, 770 Lexington Avenue, New York.

Before I begin with our proof, your Honor, I would like your Honor to know the termination proceeding pursuant to Kevin Steel has been commenced. Plaintiff's side has been put in. And counsel for 807 has asked for time to examine pre-trial discovery, but we are proceeding pursuant to your Honor's mandate before Judge Perenti that it begin. The question, as your Honor's decision indicates, the debtor has a right to go before Judge Perenti on the question of arbitration and all questions may become moot because

if that decision comes down in favor of Bohack we have a right to terminate that contract. Then the question is moot.

I want to make the point that we have started before the Court and have an adjourned date at the request of counsel.

THE COURT: There were two issues I referred to Judge Perenti, one was the question of advisability of the arbitration --

MR. SHAW: Yes.

THE COURT: And the other, I think they are related, and intertwined, that is the question of rejection of the contract.

MR. SHAW: Yes.

THE COURT: Is Judge Perenti hearing both issues?

MR. SHAW: He indicated he will hear both issues.

THE COURT: Do you understand --

MR. MANGIN: Your decision didn't come down until the 18th, the day we had the opening of the proceeding before Judge Perenti.

THE COURT: I called Judge Perenti and told him what I was doing. I told him my decision was in draft and I advised him that I was referring back to him the issue of arbitration.

MR. SHAW: The issue of granting the debtor

remand to the bankruptcy court consistent with this opinion.

THE COURT: Don't you agree that this hearing should be completed first?

MR. SHAW: I do.

MR. MANGIN: Before what?

THE COURT: Before I decide the motion for a preliminary injunction.

MR. MANGIN: No, your Honor.

THE COURT: Do you understand this issue will be moot once the contract is rejected?

MR. MANGIN: First of all, I don't expect the principle that the contract can be rejected under the circumstances. But also --

THE COURT: Let's assume it finally is the law, Mr. Mangin, and Judge Perenti authorizes Bohack to reject the contract. What you would do is appeal it. For the moment, that would be the law of the case. At that point, wouldn't this be moot?

MR. MANGIN: No.

THE COURT: What would remain?

MR. MANGIN: Because the rejection of the contract would only have an effect as of a set date. And there are issues that are pending here that refer back to December of 1974. And even at the termination

of a collective bargaining agreement the parties are bound to arbitrate any of the disputes that arose during the term of the --

THE COURT: We reached a second issue, whether the judge would permit arbitration under the arbitration agreement or some other form of arbitration, or whether he insists that the union or the employees file their claims in the proceeding, isn't that true?

MR. SHAW: I agree with your Honor.

MR. MANGIN: Your Honor, this proceeding is on a temporary restraining and preliminary injunction preventing the union from taking any action that it would be entitled to assuming that the employer either did not go to arbitration or went to arbitration and refused to abide by the collective bargaining agreement and the decision of the arbitrator. We have to be in a position where we are seeking to compel arbitration, looking for a determination on the question that will be before the arbitrator. We are being denied either to go to arbitration or exercise any economic action against an employer. That is in effect taking the collective bargaining agreement that the union signed and saying you don't have any rights under that contract. But on the other side, the employer has not only all the rights under the contract by coming in

here and getting specific performance of the no-stril provision, in addition it is getting an opportunity to go before a bankruptcy judge on a rejection of that contract.

The union has absolutely no rights up to this point under the contract because the bankruptcy judge imposed a temporary restraining order, injunction you vacated because it did have no jurisdiction to so enjoin the union. This Court has again put in a temporary restraining order without requiring the employer to go to arbitration. We are still put in the same position.

THE COURT: I agree with you only in small part. To date, all your remedies that you pursue were based on the contract. I made it clear in my opinion that your notice to arbitrate was really based on an unfair labor practice and I touched on that only because I held that the city, the joint committee, had no jurisdiction over interpreting the subcontracting clause of the contract.

You did not ask for money damage. It may very well have been that the arbitrator could have, if it came before theproper arbitration unit, that they could have awarded damages. I won't pass on that.

Your notice of arbitration talked about a right

of the employer to eliminate its warehouse and the employees working at the warehouse.

MR. MANGIN: There was --

THE COURT: Wait. I thought I said enough in my opinion to indicate that if all there was to it was a claim for damages that well could be handled by the bankruptcy court because if our Court of Appeals or the Supreme Court agrees with Kevin Steel and the other cases, that once the employer had the right to terminate those employees and if the only issue is damages, there is no reason to go to arbitration. Just as there was a right to reject the contract.

MR. MANGIN: Your Honor --

THE COURT: Let me finish the thought.

MR. MANGIN: I'm sorry.

THE COURT: I don't want to give you advice, I am just expressing this opinion. I try to tell both parties, when we talk about unfair labor practices, it might also be a breach of contract. You said the union has been denied its right. True enough on the avenue you pursue you found a road block and that is because this employer happens to be in the bankruptcy court.

If you read Kevin Steel carefully and the Railway Employees Agency case, and when they talk about hemogenizing the court, they do not mean where the vital

issue is survival to support the continuance of the contract because it's self-defeating. Should the bankruptcy judge permit the arbitrator to say continue the contract when he would find that the very continuance would destroy the employer? Of course not.

You can't read Kevin Steel any other way. That does not mean this new unit as Judge Feinberg calls it -- permit that new debtor to engage in unfair labor practices. But the primary and exclusive jurisdiction of that issue is the National Labor Relations Board. Neither side has seen fit to file a petition with the National Labor Relations Board. It may be for good and sufficient reasons for representing your clients, but when you say the union has been barred from pursuing its remedy under the National Labor Relations Act, I differ with you.

MR. MANGIN: I didn't say that. Under the contract --

THE COURT: That is only temporarily forestalled because of the reality of the situation.

MR. MANGIN: The Second Circuit in the Kevin Steel case and the REA case referred to the option the debtor in possession has -- the time after the petition was filed to either reject or assume the contract. And if there is a period of time that elapses between

the filing of the petition and the time that the employer seeks to reject the contract, that period of time can be sufficient that it constitutes either an explicit or implied assumption of the contract --

THE COURT: I am sorry, I read those cases, Kevin Steel, and Judge Mansfield said something like that in REA --

MR. SHAW: I agree with your Honor. I want to raise a hypothetical question. If the termination procedure is concluded and concluded successfully on behalf of the debtor in possession, then there is a contract. Then the question of the preliminary injunction becomes mooted. I think your Honor hit upon it as to the question of damages or on the question of getting the debtor the right to or leave to arbitrate, but Judge Perenti is hearing both. I think nobody can disagree and I respectfully submit although the proof has not been put before you, a strike at this time would destroy the debtor completely.

THE COURT: Except for the reason that you might find an advantage in obtaining a settlement, why do you press the dissolution of the temporary restraining order when Judge Perenti is about to decide the vital fact issue in this case?

MR. MANGIN: When this took place in December

of 1974, this subcontracting as the union contends -- the union did not take action against the employer -- but there is a provision in the contract in addition to the subcontracting provision that prohibits the employer from having work done by persons other than the employees.

THE COURT: I passed on it before in Sterling Optical and I am familiar with it. Of course, they cannot subcontract work out that can be done by the employees.

MR. MANGIN: If the work is being performed by workers at standards below those contained in the collective bargaining agreement, the union does not have to go to arbitration. All it need do is file a 24-hour notice with the employer and if there is a compliance with the contract within that 24-hour period it can institute a strike --

THE COURT: I don't know whether that has ever been tested.

MR. MANGIN: Yes.

THE COURT: I know that where the provision is you must contract out tounion people, you cannot subcontract to non-union.

MR. MANGIN: That is right. I am talking about the standards. Your Honor, that provision is in the

contract and I will provide you with it.

THE COURT: I will assume it is.

MR. MANGIN: I will provide you a copy of that provision of the contract.

Now, in December when this first occurred the union did not take this type ofaction against the employer. It went to arbitration. It received an award. Afterwards, it sought to dissolve the dispute in a manner to keep employees working to the best that could be done. They wanted to sit down with the employer, work the thing out so that the employer could operate.

THE COURT: You may be on a collision course here. You are saying you wanted to work out something where the employees, meaning your union members, would continue working and what the employer is trying to say is if they continued your people in their employ it would destroy the viability of the employer.

MR. MANGIN: That isn't correct. That position isn't correct. First of all, the work performed now by Presuto employees were being provided by Bohack under the 807 contract. The work performed by Hill employees -- Mr. Bender on behalf of Bohack came to Local 807 and indicated that he could get the work into Hill's and when 807 agreed to start with Bohack employees from

the Hill's terminals as opposed to starting from Maspeth terminal at Bohack Square --

THE COURT: Mr. Mangin -- now you are revealing the terms of the settlement and the settlement negotiations.

MR. MANGIN: I'm answering your question. If we were put in a position where we did not have a restraining order of this Court or if we did not have the injunction proceeding that Judge Perenti instituted and signed a preliminary injunction on July 16th, there would have been a position that both parties could sit down and negotiate from either strength or weakness, whatever the case may be, and it would have been resolved.

What happened when Judge Perenti instituted a temporary restraining order on July 16th, on July 16th Mr. Bender said to his truck drivers: We don't need you anymore.

MR. SHAW: That is not true.

MR. MANGIN: And terminated the employees and rearranged the entire operation around the deliveries so that he didn't have to use the Bohack drivers any more. It was used as a sword by Bohack and the truck drivers employed by Bohack have been put out of work. 120 drivers have beenput out of work because of an

injunction proceeding that Judge Perenti didn't have jurisdiction to enter, and I say respectfully this Court doesn't either.

THE COURT: Mr. Mangin, of course any time somebody brings a 302 action and they make out a claim showing there is an arbitrable clause and they ask for relief under 301, I sign a temporary restraining order. As a matter of fact, your position is so much weakened because you instituted the 301 action -- you asked for arbitration. Grant you, a temporary restraining order doesn't go to the merits, it just preserves the status quo until we reach the preliminary.

Now, you're making a conscious effort to drag me into the negotiations when you start talking about 120 men, and Hill's and all that. I won't get into that. I don't discourage settlement, that is up to the parties, but anything the debtor in possession does here he does as a representative of all the creditors and not Bohack alone.

MR. SHAW: And 4,000 employees.

THE COURT: I read 3,000, but lawyers usually exaggerate. An exaggeration by 33 and 1/3 percent isn't that bad. I read the papers, you know.

Mr. shaw: I'm aware of that.

MR. MANGIN: You asked me the question what was

the reason for seeking --

THE COURT: At this time, never mind going back to July.

MR. MANGIN: I wanted to put the parties in a position to sit down and work out of the dispute as they have in the past. I can refer your Honor to other documents I have, this company came to Local 807 and sought to have the dropping of their trailers at the stores and they had contractual bounds themselves not to do that. They had contractually bound themselves to keeping, I believe, 150 truck drivers working. They came and said: We can't live with this any longer, we are having a problem. 807 and Bohack sat down and discontinued the list situation and they worked out an arrangement that both could live under. They would have worked out an arrangement, and they haven't been in that position since Judge Perenti issued the restraining order. They haven't been in that position since the arbitrators' award that was rendered has in effect been stayed by the actions of Judge Perenti and this Court.

THE COURT: You called the injunction order that I issued a sword. I don't know whether that is accurate or not. Maybe there is one sword and it depends on whose hand it shall be in, because you must recognize --

because if you had the right to strike, aside from the right under the National Labor Relations Act, in your hands the sword might very well be at the heart of this business. So you may feel you are at an unfair disadvantage because of the injunction but I can't understand how any restraining order would stop any negotiations. There are possible claims. I don't know how they run, I saw a figure of yours -- I don't know if it's 25,000 or 250,000, I don't know where the decimal point was. At one point, you said the claim --

MR. MANGIN: Not from me --

THE COURT: But, someplace along the way there will be a claim filed. If not before the arbitration then before the bankruptcy court. There is no reason you can't negotiate on that now instead of waiting until the claim is actually filed. Nobody has a lack of sympathy for those men who have been working for so long and suddenly lost their jobs. It would be wonderful if everyone of the men could be placed at the same salary someplace else. That much I can say, without even knowing the facts, is impossible. I suppose an effort was made to place a certain amount of them with your suppliers. I could see the other problems with the other union men.

MR. SHAW: I have been advised that one-third,

a third of the men have already been placed.

THE COURT: By you?

MR. SHAW: Not by us..

MR. MANGIN: By?

MR. SHAW: By the union.

THE COURT: If they gave them jobs elsewhere you can't take credit for that.

MR. SHAW: Then when the issues are predicated on the question whether they have been replaced and what they receive from unemployment, there is a question as to what amount the claim may be. It may be, when the claim is filed, there is going to be hard talking on that question, but I don't believe that is --

THE COURT: Mr. Mangin, I understand you have delayed the proceeding before Judge Perenti. So in fact if this temporary restraining order is extended it is of your doing.

MR. MANGIN: Your Honor, I was advised in this Court on November 12th to be ready on the 18th of November. On the 18th of November I was served with a summons and complaint. I asked for two weeks in which to file an answer. Judge Perenti --

THE COURT: You are going to deny all the allegations.

MR. MANGIN: And put in affirmative defenses. I

filed an answer on last Friday and I instituted -- withdrawn. In addition to the denial of the allegations of the complaint, also affirmative defenses were imposed. In addition to that I requested an opportunity to examine specific individuals in the employ of Bohack and I gave them dates of December 1, 2, 3. In addition I wanted to examine specific individuals who were not employees of Bohack and I gave dates of December 8, 9 and 10. And when those examinations are completed I will be able to go forward.

Given the complexity of Kevin Steel, NDA, what the rejection calls for -- what burden the employer has to satisfy rejection, this is not a matter to be taken lightly and I don't. I am going to exercise -- not for the purpose of delay but for the purpose of being able to establish what I think exists and what I believe will benefit my client, and go forward on the basis of what the discovery shows. More than that, I can't do.

THE COURT: How are you ready to go to arbitration immediately?

MR. MANGIN: I am ready to go on the question of arbitration as to whether or not the contract has been violated.

THE COURT: Don't you think those issues are just

as complex as those before Judge Parenti?

MR. MANGIN: No. The problem before the arbitrator is simply a contractual one.

THE COURT: I have been here too long not to recognize when tactics are employed for the purpose of delay and you are doing it, Mr. Mangin. You can get this before Judge Parenti tomorrow if you wanted to but you don't want to.

MR. MANGIN: You are absolutely right because tomorrow I don't have an opportunity to know what has been transpiring here as to Dohack, Kraadalo, Mills, Date Shopwell, what the operation is right now at Mills. I don't have all of that information. I don't have any records since July 18, 1975 --

THE COURT: You say in that information you have to know how much merchandise they bought in order to determine whether in July of 1975 the employer acted fairly or not or in an anti-union activity in eliminating its warehouse --

MR. MANGIN: They have got to show this is onerous and burdensome.

THE COURT: I am talking about the unfair labor practice.

MR. MANGIN: I am talking about the rejection of the contract.

THE COURT: He has to show that it was onerous and burdensome. They put their case in and you've got to look at it. Now you have to examine all these people?

MR. SHAW: I had the bank here today and I had to --

THE COURT: I've got the picture clearly.

MR. MANGIN: May I respond? What Mr. Shaw has said is not completely correct. First of all, he has not been directed by Judge Mishler to produce records --

THE COURT: You mean Judge Perenti?

MR. MANGIN: Judge Perenti, yes. That Mr. Binder said it was onerous and burdensome and came up with figures, there was nothing to support it.

THE COURT: Then you've got a good argument. They they haven't proved their case and you can lose.

MR. MANGIN: There is a possibility of that. It's not an intent to delay it, I am not certain what the District Court is going to do and what Judge Perenti is going to do with regard to the rejection of the contract.

THE COURT: With the motion before me, I will tell you what I am going to do. I find that the union has by design delayed the proceeding before Judge Perenti. I find that there is just cause to extend the

restraining provisions of the temporary restraining order, in that the issue before me may be rendered moot by either or the rejection of the contract and the determination on the advisability of arbitrating the issues in accordance with the arbitration procedure, grievance in arbitration procedure of the contract, or under new Bankruptcy Law 919(b) and the terms of the temporary restraining order are extended to a determination by Judge Perenti on those issues, and if either side appeals to this Court from that decision, at such time as the appeal is determined.

Now, I say the union can accelerate the length of time of the temporary restraining order by completing the hearing before Judge Perenti and you can convey my hope that Judge Perenti will decide the issue speedily and if it comes before me I promise you that I won't take more than a weekend, maybe two working days, and if it is unfavorable to the union you can get your appeal, at least filed before them within a short time when heard. I believe that is the way to proceed concerning the issue before the Court.

Again, I emphasize that in no way limits the power of the union going to the National Labor Relations Board and placing it before them.

Now, I have made my findings in accordance with

Rule 65.

MR. SHAW: Thank you, your Honor.

THE COURT: Again, I say to the parties, I can't see any reason why negotiations for settlement cannot be carried out while a temporary restraining order is in effect.

MR. SHAW: I will take your Honor's suggestion and I think it is well placed.

THE COURT: It may be the rejection of the contract will alter --

MR. SHAW: It may be --

THE COURT: If the contract is not rejected, it may be that the union's claim is logical. If the contract is rejected the union's claim will be diminished. That is realistically a part of the determination. Other negotiations, trying to place the union men with the drivers of the suppliers, that kind of negotiation certainly should be pursued unless you already have exhausted the possibilities. Again, I recognize the other problems. The other men say these jobs are ours, or join our union and we will take you, and the union doesn't like that. It's a very complicated economic problem. There are very few legal problems involved, and that's why the courts are told to stay out of labor matters. And we are happy to do it.

MR. MENGEL: I want to respond to Mr. Shaw's statement about the negotiations. And settlement discussions will continue. As I indicated to you, your Honor, in the letter to you some few weeks ago, when the question of what settlement discussions are taking place, the only settlement discussions that have taken place up until this time have dealt with the wages, vacations, health and pension, and no other type of discussions.

THE COURT: Maybe you can limit it without compromising further claims that you might have which may result from a decision. You don't have to give general releases --

MR. SHAW: If there are damages, and no claim has been filed in the bankruptcy court, I may suggest during this period of time he is taking to examine witnesses if he would file a claim in the bankruptcy court and advise us what position he is taking, at least I will know where I am as to the vacation pay or sick leave or payment of men. I don't think there are issues involved there. There may be other damages that prove logical. I would like to know about them. I can't stand in a vacuum. You have 33 men here making claims. Let them file their claims. Maybe we can expedite that issue. Because we are on the eve of

filing a plan. As I said, the bank is here. I thought your Honor would want to hear from the bank today. The puzzle is filling in and Bohack will file its plan. If I know what claims they are -- they haven't been docketed yet -- I wouldn't be --

THE COURT: There has been enough confusion in this procedure. The reason that I delayed in writing my opinion on this, as I told you on the telephone, and I think I have some correspondence on it, I talked with Judge Perenti at the judicial conference this past September right after Labor Day. And I just said that I do have some very difficult questions of law and he said, well, in an off-hand way, that that is being settled. I said, thank God.

Then, when it came up again, I said, "I thought it was settled." And for the first time I realized it wasn't settled. That's why it took so long. I worked on it a week to 10 days --

MR. SHAW: I can take part of the blame, your Honor. I had a heart attack and I was in the hospital and out for 4 months. I had spoken to Mr. Mangin to try to come to a conclusion. If they file their claims and I know the damages they are seeking, and if they are valid as a matter of law, perhaps there is a way.

Mr. Goldstein is here. I am sure he would like

to know, because we are meeting with the creditors and we are giving a report --

THE COURT: I want to say I don't want to confuse the issue by taking testimony on matters that are before Judge Perenti. I would rather he complete it and I will review it. As I say, from there on either side can take it to the Court of Appeals. There have been novel points raised recently. It's amazing how little there is on these issues, right to arbitration, on the contract, and right to reject. As a matter of fact, the one case that was cited to me was a 1920 case. It went back that far. It really wasn't in point. Then there was some referee's decision that was cited to me. I happened to stumble across Muskegan myself. It seemed to make sense and it has been the forerunner in Kevin Steel. One of our duties is to try to homogenize conflicting concepts in the law. I thought that Judge Feinberg found a way.

MR. SHAW: Well, we appeared before Judge Perenti and we put in the issues and we are prepared to complete them within a half hour. I may have a few questions to satisfy the record and that will be it. We are prepared to go forward. I saw no reason to withhold the continuation of the hearing --

THE COURT: It revealed a glaring defect in the

bankruptcy rule to think that in a plenary proceeding where the bankruptcy procedure is extended -- the whole concept of bankruptcy law is quick disposition. Here we have full plenary action. This bankruptcy proceeding would never terminate if we have plenary proceedings within the bankruptcy procedures.

MR. SHAW: There wouldn't be time enough.

THE COURT: Someone ought to go to Congress and point it out. I spoke to our judges about it and they weren't even aware of it.

MR. SHAW: If there wasn't a practical result in three-quarters of the matters before Judge Peretti, we would never be able to file our plan or arrangements. It's only been through the Court's aid and Judge Peretti, and I say it loud and strong, that we used the practical approach rather than getting in the issue of 702 questions. Of course we had Queens Boulevard and other matters and we will say that 850 of the problems before the Court are now disposed of and the rest will be ---

THE COURT: What I saw of the petition when it was first filed was that the future of Bohack looked very dim. I know it is your union that was probably most adversely affected. But think of the number of clerks and other helpers that have been retained. The problem would have been multiplied a hundred-fold if

they had gone out of business.

MR. MANGIN: You're concluding in those remarks had Dohack sat down and worked out its arrangements and problems with Local 807 as it has done in the past, that it would have gone into a --

THE COURT: What I am saying is that Dohack's decision appears all wrong to you because it affects your union with respect to economic interests, emotional problems, being discharged -- I know. Well, I really can't know but I have some idea of the effect this has on the 100 families or 30 families where the man was discharged. I know that but I am saying that the total impact is far less than if they closed down.

MR. SHAW: Similar to the City of New York.

THE COURT: Of course.

MR. SHAW: The city has been discharging people and I don't know if it's for the good of the many.

THE COURT: The solution of any of these problems is never totally satisfactory to all the people involved. It can't be. The creditors aren't particularly happy. They accept it as a business loss. Some will have to file their own petitions, that happens, you know. I don't know how many suppliers are going to file petitions out of the bankruptcy of W.T.Grant. I don't know how many will file petitions if the City of

New York can't pay its bills or can't make provisions for it. Many, many, many.

I don't know what the total effect is.

MR. SHAW: It could be staggering.

THE COURT: I want to explain that I know why you argue zealously and vigorously and why you engage in some of the tactics you do engage in. I don't approve of all of them but I understand them. I don't know how often your phone rings and how many complaints you have because the people haven't heard or haven't worked and maybe they are getting me the benefits from the union --

MR. MANGIN: Their benefits have terminated. The phone calls -- I can't stay in my office, I have to go to the library to get work done. If I stay in the office I wouldn't be able to do a thing.

THE COURT: I understand. I want to soften some of the criticism I made by saying you've got a very difficult job emotionally and legally. But I have to see this as I read the cases and that is all there is to it. That doesn't mean I am right, it just means I am trying my best to come to a determination based on what I know. There is very little in the law on this subject. Judge Feinberg pointed out the reason he said you never have the dispute because when someone is in

Chapter XI they are not inviting a strike, they have to get along because it's so shaky. Just the slightest impact could destroy the whole works and everybody recognizes it.

MR. MAGEN: Which is the point. If a bankrupt was able to come in and simply on the basis of being a bankrupt get a temporary restraining order, then in fact what Judge Feinberg was saying there would not be correct. And what he is saying is that the parties have to work out their problems together and that is exactly the position that I want 807 to be in and Schack to be in and not to have this temporary restraining order or preliminary injunction preventing these parties from getting together. And your Honor, you referred to tactics. The only tactics I am employing are tactics to try to understand what it is that Kevin, RBA, and the other cases -- as limited as they might be -- are referring to. In order to accomplish this, you have to -- my feelings are -- you have to be engaged in discovery. That is the only purpose. There is no tactic. My purpose is I went to arbitration back in May and I pressed for arbitration of that dispute. I did not, once the award came down, seek to have any economic activity against this employer. I pressed in this Court for arbitration because I wanted a

determination to be made under the contract. I am not looking to delay, I am looking to get a resolution within the framework of the contract.

What has happened between the bankruptcy court, and honestly, this Court, is that the employer has used this injunction and has used it and said I don't have to deal with this contract any longer, bankruptcy or Chapter XI has put me in a position that I never thought I could be in before, and I could do what I want. That is the position that Bohack has taken.

THE COURT: You know that that argument was made. If an employer has a burdensome labor contract, all he need do is file a petition in bankruptcy and place the whole framework of labor relations in jeopardy. But Judge Feinberg predicted that that wouldn't happen. How many employers are going to file a petition just to get out of a labor contract?

MR. MANGIN: If there is a temporary restraining order and then we go to the bankruptcy court and say we have a grievance that may involve either a problem -- they always say it is a problem -- if the bankruptcy judge is going to entertain the temporary restraining order or the District Court is going to entertain the temporary restraining order or refer the question of arbitration back to the bankruptcy judge as to whether

or not the debtor in possession or union can go to arbitration, the employer is in a position where he can accomplish anything it wants because the bankruptcy judge has all the creditors out in front of him lobbying to perform for themselves and he is put under certain burdens so that the debtor in possession and the union are never put in the position to work in the framework of the contract.

THE COURT: But the temporary restraining order is not granted on the basis of a bankruptcy proceeding, it is granted on a 301. There are only two instances where the Court can grant a temporary restraining order or a preliminary injunction, and that is what we call 10-L -- under the National Labor Relations Act, or when the proceeding before the National Labor Relations Board compels arbitration. It's unrelated to the bankruptcy proceeding. I am saying in this case, because the issues that will be decided will moot the problem -- incidentally, it may be the basis for granting a mandatory injunction. If Judge Parenti said, and I agree on review, that this should go before the National Committee --

MR. MANGIN: Grievance Committee.

THE COURT: Grievance Committee, or the joint city local committee. Then the mandatory injunction

will stay in accordance with the findings. As I say, you've been in there for a long time, you've got this at your fingertips. This is not the case of the jury trial where you must know everything before hand because the jury is sitting and you must complete your case. If you start to put your case on and you said to Judge Pollenti, now this has become an issue and I didn't realize it and I would like some information from Dohan or alternatively I would like to examine Mr. Bernadine, I am sure you will get the information. I tried to explain that in non-jury cases. I have one to start on December 15th on a trademark infringement. I dare say that the defendant has taken 5,000 pages of depositions and she would continue to take depositions for the next 10 years. I just put a stop to it. I said start the trial December 15th. I said if at any time during the trial something arises and you say you haven't had time to pursue it fully and you feel you would be prejudiced if you don't have the examination, I will suspend and have the examination. I predict it won't happen because the other side concedes it or produces the information. That is the way you do it if you want to get it over with in a hurry. If you don't, you say, Judge, I want 10 days to serve motions and then you will adjourn two weeks and then six months

later you may be ready. That is one way of doing it.

But I say, I have an obligation to see it as I believe it is. I believe you see a definite advantage in delaying the procedure before Judge Peterson. You're taking your time. I have a duty to get through with it. It's too important not to. These problems should not keep festering. The quicker the bankruptcy procedure is over and the money is distributed, the better it is for the creditors and employees and the better it is for the public.

The public includes the various landlords. I don't know how many stores --

MR. SHAW: We are down to 72. We did have 140.

THE COURT: Everybody is part of this.

MR. SHAW: There is a public debt, the public is involved. We have public stockholders.

THE COURT: They have stockholders.

MR. SHAW: Thank you, your Honor.

THE COURT: You want this on the record, Kelley, Drye and Warren, attorneys for the debtor in possession acknowledge that yesterday, which was the 25th, at 3:35 p.m., an order to show cause to dissolve the temporary restraining order was served on them. I say that motion is in all respects denied.

MR. KARLEBACH: I'm not sure of the time.

THE COURT: You don't dispute the adequacy on the time?

MR. KARLEBACH: No.

* * * *

201(a)

UNITED STATES OF AMERICA
NATIONAL LABOR RELATIONS BOARD

CHARGE AGAINST EMPLOYER

EXHIBIT "U"

INSTRUCTIONS: File an original and 4 copies of this charge with NLRB regional director for the region in which the alleged unfair labor practice occurred or is occurring.

DO NOT WRITE IN THIS SPACE

Case No. 29-CA-4739

Date Filed 11-28-75

1 EMPLOYER AGAINST WHOM CHARGE IS BROUGHT

a. Name of Employer: The Bohack Corporation

b. Number of Workers Employed:

c. Address of Establishment (Street and number, city, State, and ZIP code): 249-26 Northern Blvd. Little Neck, N.Y. 11363

d. Employer Representative to Contact: Joseph Binder

e. Phone No.: 224-8000

f. Type of Establishment (Factory, mine, wholesaler, etc.):

g. Identify Principal Product or Service: groceries, etc.

h. The above-named employer has engaged in and is engaging in unfair labor practices within the meaning of section 8(a), subsections (1) and 3 and 5 (List subsections) of the National Labor Relations Act, and these unfair labor practices are unfair labor practices affecting commerce within the meaning of the Act.

2. Basis of the Charge (Be specific as to facts, names, addresses, plants involved, dates, places, etc.)

The Bohack Corporation has discriminated against its truck drivers in regard to their hire and tenure of employment to discourage membership in Local 807, I.B.T.; has interfered with, restrained and coerced said employees in the exercise of their rights guaranteed in Section 7 and since July 18, 1975 has sought to disavow its collective bargaining agreement and has refused to bargain collectively with Local 807, I.B.T.

By the above and other acts, the above-named employer has interfered with, restrained, and coerced employees in the exercise of the rights guaranteed in Section 7 of the Act.

3. Full Name of Party Filing Charge (If labor organization, give full name, including local name and number): Truck Drivers Local Union No. 807, International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America

4a. Address (Street and number, city, State, and ZIP code): 32-43 49th Street Long Island City, New York 11103

4b. Telephone No.: RA 6-2525

5. Full Name of National or International Labor Organization of Which It Is an Affiliate or Constituent Unit (To be filled in when charge is filed by a labor organization): International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America

6. DECLARATION

I declare that I have read the above charge and that the statements therein are true to the best of my knowledge and belief.

By J. Warren Mangan (Signature of representative or person filing charge) Attorney (Title, if any)

J. Warren Mangan

Address 32-43 49th Street Long Island City, N. Y. 11103 726-6009 (Telephone number) November 26, 1975 (Date)

WILLFULLY FALSE STATEMENTS ON THIS CHARGE CAN BE PUNISHED BY FINE AND IMPRISONMENT (U.S. CODE, TITLE 18, SECTION 1001)

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